(18,726.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1903.

No. 154.

JAMES C. FARGO, AS PRESIDENT OF THE AMERICAN EXPRESS COMPANY, APPELLANT,

vs.

WILLIAM H. HART, AUDITOR OF STATE OF THE STATE OF INDIANA.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

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1 UNITED STATES OF AMERICA, *ss:*

To William H. Hart, auditor of state of the State of Indiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, thirty days after the date hereof wherein James C. Fargo as president of the American Express Company is appellant and you are appellee, to show cause, if any there be why the decree mentioned should not be corrected and speedy justice should not be done to the parties in this behalf.

Witness the Honorable Melville W. Fuller Chief Justice of the Supreme Court of the United States, this 6" day of October, 1902.

[Seal Circuit Court of the United States, District of Indiana.]

JOHN H. BAKER,
Judge U. S. Dist. Court, Dist. of Indiana.

1½ I received this writ at Indianapolis, Oct. 16—1902, and served the same on the within named William H. Hart as auditor of state of the State of Indiana personally at Indianapolis, Marion county, Oct. 17—1902.

HENRY C. PETIT, *Marshal.*
By T. E. MARTIN, *Deputy.*

Marshal's costs $2.00.

2 Pleas of the circuit court of the United States for the district of Indiana, begun and holden at the United States court house in the city of Indianapolis in said district, on the first Tuesday in May, in the year of our Lord one thousand nine hundred and two, before the Honorable John H. Baker, judge of the district court of the United States for the district of Indiana, and *ex-officio* judge of said circuit court.

JAMES C. FARGO, as President of the American Express Company,
vs.
WILLIAM H. HART, Auditor of State of the State of Indiana.
No. 9620. Chancery.

Be it remembered that heretofore to wit, at the May term of said court, on the 24th day of August, 1898, before the Honorable William A. Woods, judge of said court, the complainant by Baker & Daniels and Carter & Ledyard his solicitors, filed his bill of complaint in the above entitled cause, in the words following, to wit:

To the honorable the judges of the circuit court of the United States for the district of Indiana:

Your orator, James C. Fargo, as president of the American Express Company and a resident citizen of the State of New York,

brings this his bill of complaint against Americus C. Daily, as auditor of state of the State of Indiana and a resident citizen of said State of Indiana and humbly complaining, showeth unto your honors that your orator is the president and a shareholder of the American Express Company which is a joint stock company or association organized under the laws of the State of New York many years ago and continuously from the date of its organization to the present time existing under said laws; that said company has its principal place of business in the city of New York in the State of New York and in said city its meetings are held and its books and general assets are kept and owned; that
3 said company is composed of more than 3,000 members or copartners who own 180,000 equal shares or interests in said company represented by certificates having a nominal value for the purposes of the agreement under which said company was constituted of $100.00 each and which for several years last past have had a market value of not less than $100.00 per share. That all of said members or share holders have a joint ownership and interest in the cause of action hereinafter stated but they are too numerous to be joined as parties hereto and it is impracticable to bring them all before the court because they are widely scattered and live in different parts of more than 15 States of the United States and that some of them are now temporarily beyond seas and your orator therefore as such president and member or shareholder brings this suit not only on his own behalf but on behalf of the said company and each and all of its members;

That said company is and for many years last past has been conducting the business of a common carrier popularly and technically described as the express business, that is to say, the quick and safe transportation and transmission over public routes and highways by means of railways, steam-boats, steamships and other public carriages of moneys, bank-bills, bonds and securities and packages containing articles of greater or less value as contra distinguished from ordinary freight; that for more than 25 years last past said company has been and still is conducting such express business in the State of Indiana and that in the conduct of its said business said The American Express Company has for many years last past carried, transported and transmitted packages of money, bonds, securities, goods, wares and merchandise into the State of Indiana from the States of New York, Pennsylvania, Ohio, Illinois and many other States of the United States and from the State of Indiana into the said other States of the United States and through the
4 State of Indiana from and to other States of the United States and still continues so to carry, transport and transmit such packages and property; that it neither owns nor operates any railroads or means of carriage of its own but does said business under contracts with railroad companies and other common carriers owning and operating railroads, rolling stock, ships and other public conveyances;

That the defendant Americus C. Daily, is and at the times here-

inafter mentioned, was the auditor of state of the State of Indiana, and a resident citizen of said State of Indiana.

That on the 6th day of March, 1893, an act of the General Assembly of the State of Indiana entitled "An act supplementary to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, express and fast freight joint stock associations, companies, co-partnerships and corporations, transacting business in the State of Indiana, repealing section- 68; 69; 70 and 71 of said act and all laws in conflict therewith and declaring an emergency;" having been duly approved by the governor, went into effect in the State of Indiana as a statute of said State, and the same has never been repealed or amended by any subsequent legislative enactment; that pursuant to the provisions of said statute and especially of section 3 thereof, said The American Express Company in the year 1898, filed in the office of the auditor of state of the State of Indiana its report for said year 1898; that a copy of said report is as follows:

5 Express companies.

1898.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests, 180,000 of $100.00 each	$18,000,000.
Item 2. No. of interests issued and outstanding 180,000 interests.	
a. Par or face value of each interest, all interests are of equal value	100.00
Item 3. Principal place of business New York, in the State of New York.	
Item 4. Market value of each interest on the 1st day of April, 1898	120.
a. If shares have no market value then state actual value thereof.	

Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	Description of real estate, structure, machinery, etc.	Assessed value.
Boone	Personal property	$40.
Clinton	" "	340.
Dearborn	" "	75.
Decatur	" "	175.
Delaware	" "	400.
Floyd	" "	300.
Fountain	" "	45.
Fountain	" "	45.
Grant	" "	330.
6 Henry	" "	60.
Jasper	" "	25.
Lake	" "	125.
La Porte	" "	150.
Lawrence	" "	220.
Madison	" "	500.
Marion	" " and real estate	10,100.
Monroe	" "	150.
Orange	" "	95.
Pulaski	" "	55.
Putnam	" "	300.
Randolph	" "	160.
Rush	" "	75.
St. Joseph	" "	300.
Shelby	" "	160.
Tippecanoe	" "	475.
Vigo	" "	800.
Wabash	" "	210.
Washington	" "	25.
White	" "	35.
Montgomery	" "	290.
		$16,015.

The above property consists of horses, wagons, harnesses, safes, &c.

The following property, of the like description, is in use by the National Express Company, and is assessed to it for local taxation, but actually belongs to this company—

being used by the National Express Company, as agent of this company.

Allen.....	Horses,	wagons,	office	fixtures,	scales,	safes...		610.
Elkhart.....	"	"	"	"	"	"	...	75.
Howard.....	"	"	"	"	"	"	...	110.
Wells.....	"	"	"	"	"	"	...	110.
								$16,920.

7 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.
55 & 61 Hudson St...	Building, New York, N. Y.	Rented	$240,000.
157 Hudson St.....	"	"	13,000.
365 Broadway	"	"	375,000.
Corner Broome & Elm Sts.	"	"	80,000.
172 St. Johns place..	"	"	9,000.
Corner Main & Erie Sts.	Buffalo, N. Y. building.	"	98,020.
Exchange St.....	"	"	16,800.
Canal & Friend Sts..	Boston, Mass. building.	Undergoing alterations for rental purposes.	154,000.
Larned, First & Cass Sts.	Building, Detroit, Mich.	Rented	10,000.
Marshall St.....	Paterson, N. J. building.	"	1,400.
			$997,220.

The foregoing real estate is of the market value of $1,983,534.50.

8 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgages or bond.	Date.	Amount.
None.		

Item 8. *a.* Total length of its lines or routes over which it transports merchandise, freight or express matter, including 4565 miles over which National Express Company so transports merely as agent of, and for account of this company..... 163,063 miles.

b. Total length of such lines or routes as are outside of the State of Indiana, including 414.70 miles over which National Express Company so transports merely as agent of, and for account of this company..... 160,849.96 miles.

c. Total length of its lines or routes within each of the counties and townships in the State of Indiana, viz:

Counties.	Miles.	Hdths.
Allen	17	20
Bartholomew	15	30
Benton	40	87
Boone	38	76
Carroll	24	75
Clarke	12	79
Clay	15	92
Clinton	28	65
Dearborn	25	82
Decatur	54	74
Delaware	20	54
Elkhart	26	64
Fayette	14	16
9 Floyd	9	02
Fountain	41	42
Franklin	31	32
Grant	19	94
Greene	25	40
Hamilton	16	94
Hancock	31	63
Hendricks	56	95
Henry	29	88
Jasper	41	49
Jennings	8	81
Johnson	19	97

	Knox	6 85
	Kosciusko	28 38
	Lake	65 45
	La Porte	81 35
	Lawrence	41 05
	Madison	52 02
	Marion	87 38
	Monroe	29 22
	Montgomery	49 83
	Morgan	12 55
	Newton	50 30
	Orange	27 29
	Owen	11 19
	Parker	52 19
	Porter	20 26
	Posey	24 83
	Pulaski	17 95
	Putnam	68 93
	Randolph	45 51
	Ripley	9 76
	Rush	25 55
10	Shelby	28 48
	Starke	5 73
	St. Joseph	10 24
	Tippecanoe	44 72
	Vanderburg	12 89
	Vermillion	45 97
	Vigo	31 84
	Wabash	31 37
	Warren	26 35
	Washington	27 66
	Wayne	14 33
	White	42 01
		1,798 34

And the following lines or routes over which National Express Company so transfer- merely as agent of and for account of this company:

	Adams	16 76
	Allen	28 21
	Clinton	23 26
	Elkhart	5 34
	Fountain	25 12
	Grant	25 69
	Huntington	8 10
	Howard	26 74
	Kosciusko	20 30
	Lake	34 56
	La Porte	36 17

	Marshall	22 53
	Montgomery	15 90
	Parke	38
	Porter	32 25
	St. Joseph	30 72
11	Starke	15 04
	Tippecanoe	6 65
	Vermillion	6 85
	Wells	15 75
	Whitley	18 38
		414 70
	Total	2,213 04

Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has no actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned by the company on the first day of April, 1898, and which is not, and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to uses having no relation whatever to the express business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April 1, 1898, was not less than $1,983,534.30.

On the first day of April, 1898, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept,
12 by the company, so long as it has owned the same, in the city of New York where its principal office is situated. No part of said investments was used by the company on the first day of April, 1898, or during the year then ending, in its express business, and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral, which were on the first day of April, 1898, of the market value of $15,501,344.33.

All of said stocks, bonds, mortgages, and other personal securities, or evidences of indebtedness, are in the possession of this company

in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by any authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first of April, 1898, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts and other States, and was, on that day, of the market value of not less than $3,076,438.

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which same is situated.

That on the first day of April, 1898, this company was the
13 owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c., of the value of $1,505,738.72. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which the same were situated. That of said amount of $1,505,738.72 less than $8,000. in value was situated in the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1898, was the owner, and in possession of actual tangible property situated outside of the State of Indiana, of a market value exceeding the market value of the entire aggregate interests of the associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct for the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said company and situated outside of said State.

This claim on the part of the company is founded among other things, upon the opinion of Mr. Chief Justice Fuller in the case of The Adams Express Company against The Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of The Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of The American Express Company against Indiana (165 U. S. 255).)

14 That the statements of said report were and are true in substance and in fact.

That pursuant to the provisions of the statutes of Indiana in that behalf the State board of tax commissioners of the State of Indiana convened in regular annual session on the 11th day of July, 1898,

and continued in session until this 24th day of August, 1898, and must adjourn on or before the 26th day of August, 1898; and that upon the convening of said board the auditor of State of Indiana laid before said board the said report of said American Express Company and said board while so in session, assuming and pretending to be so authorized to do by the statutes of the State of Indiana and especially of the statute of said State of March 6th, 1893, the title of which is hereinbefore set out, assumed to make and gave out to your orator and said American Express Company and to the general public that it, said board had made, a preliminary valuation and assessment for the year 1898 of the property of said American Express Company in the State of Indiana, other than the tangible physical property which is valued and assessed for purposes of taxation by the township assessors and other local taxing officers of said State of Indiana pursuant to the provisions of the statute of said State, approved March 6th, 1891, and entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency;" that said preliminary assessment was $450.00 per mile of the 1798.34 miles of lines or routes of said American Express Company in the State of Indiana.

That before making said preliminary assessment said board had heard and received no testimony or evidence touching the value of said property of said American Express Company so as aforesaid assumed to be assessed by said board except that furnished by and contained in the said report of said American Express Company. That after the said board had advised said American Express Company of said preliminary assessment and on the 23d day of August, 1898, said American Express Company appeared before said board and protested against said preliminary assessment and submitted and filed its written protest against said preliminary assessment; said protest was and is in the words and figures as follows:

To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1898, of the property of this company in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State.

The following are severally the grounds upon which this company protests:

1. Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto.

2. Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 of the constitution of the

State of Indiana and of section 23 of article 1 of the constitution of the State of Indiana.

3. Because the method of procedure adopted by your honorable body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and is in derogation of
16 the rights privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana.

4. Because said assessment includes property which is not and never has been physically within the State of Indiana, and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation.

5. Because since the 1st day of January 1898, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1898, duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body.

6. Because the valuation and assessment as made by the local taxing officers in 1898, in the State of Indiana, of this company's property in that State, from which no appeal has been taken, is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana.

7. Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1898, pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1st, 1898, and is not now
17 any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana.

8. Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 163,063 miles (of these 34,957 miles are in this country and the remainder is made up of water routes, railroad and other routes and lines outside of this country.), that by its said report this company is shown to have had on April 1st 1898, a capital of the face value of $18,000,000. then worth on the market 120 cents on the dollar or $21,000,000. and no more; that by its said report this

company is shown to have had on said April 1st, 1898, real estate without the State of Indiana not used in its express business which was valued for taxation at $997,220. and to have had on said last named date in the State of New York and subject to the jurisdiction of the State of New York for taxation purposes personal property consisting of bonds, stocks, mortgage notes and other like securities of the market value of $15,501,344.33, and that it then had in Indiana 1798.34 miles of lines or routes and that this company's property in the State of Indiana valued and assessed by the local taxing officers in 1898, was assessed for taxation purposes at $16,015.; and this company now shows that in none of these respects has the truthfulness of said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1898, other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be:

(a.) In excess of $118.00 per mile even if its said personal
18 property of the value of $15,501,344.33, outside of Indiana and not used in its express business be included in arriving at said value; and

(b.) If the value of said personal property outside of Indiana and not used in this company's express business be, as it should be excluded could not be in excess of $24.00 per mile; and

(c.) If the mileage other than water and foreign routes be taken as the total mileage and said $15,501,344.33, of value of personal property, outside of Indiana and not used in this company's express business be excluded, as it should be excluded, could not be in excess of $138.00 per mile.

Wherefore the American Express Company respectfully asks your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1898, of $450 per mile upon said 1798.34 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $25.00 per mile for said 1798.34 miles of its lines or routes in the State of Indiana; and that this protest be received, filed and considered by your honorable body.

Respectfully submitted,

BAKER & DANIELS,
Att'ys for American Ex. Co.

Indianapolis, Indiana, August 23, 1898.

Your orator further avers that neither said auditor of State nor said bond nor any other officer of the State of Indiana ever made any objection to said report or to any item, statement or part thereof so filed by said American Express Company, but that said auditor received and accepted the same as filed and laid the same before said board as above

stated; that neither said auditor or said board nor any other officer of the State of Indiana ever requested your orator or his said
19 company to furnish him or it any other or further information respecting said company's property and routes in addition to that contained in said report, except that on the oral hearing of said protest by said board on August 23, 1898, said board verbally asked the representatives of said company then present presenting said protest, whether said company's report of 1897, filed with said auditor showed the said mileage other than said railroad mileage in this country and said representatives stated to them that it did not, which was true, and further said that this was the first year in which the report had shown the whole mileage of the company, domestic, foreign and water mileage, which was true; and except at the same time said board asked said representatives whether a messenger or like agent of said company accompanied its freight on ocean vessels and said representatives then orally answered that they could not state but that even on many of its domestic railroad routes its messenger was the baggage master of the railroad train carrying the express matter; and except that at the same time said board asked said representatives whether the mileage so returned and reported by the company for 1898, included as routes the distance between foreign points at which the company issues and pays express money orders and travelers' checks and said representatives stated that they could not state; and except that said board at the same time asked whether the company had messengers traveling over the foreign land routes embraced in said total mileage so reported in 1898, and said representatives answered that they could not state, but stated that such matters were in the charge of the company's European department and the company's express business there carried conformed to local usage in each country respecting the carriage of express and freight matter and that in the larger cities for example, London and Paris, said
20 company maintains offices and runs wagons; and at the same time said representatives furnished to the board, it being the board's desire that they should, printed sheets showing a list of said company's principal foreign offices and showing its tariff rates between all its American offices and those points.

That all of the matters and facts stated and set forth in said written protest above copied and set out are true in substance and in fact and your orator now here alleges their truth and allegations or charges in this his bill of complaint and asks that they be so considered by the court with the same effect as though now here repeated as independent allegations of fact in this bill of complaint.

Your orator further alleges that the amount of the State, county and other taxes which will be certified by said auditor of State to the auditors of the several counties of the State of Indiana, in which said company has lines and routes if said assessment shall be made final and shall stand, payable by said company, for the year 1898, will be over $14,000, all of which is in controversy and dispute in this suit; that the said State board of tax commissioners,

as your orator has good reason to believe and does believe, will make its said preliminary assessment and valuation against said company final and will before it adjourns, viz: before August 26, 1898, certify said final assessment to said auditor of State; that said auditor will forthwith, as your orator has good reason to believe and does believe, if he is not restrained from so doing, apportion said valuation and assessment to the county auditors for distribution among the several counties, townships and towns, under the provisions of said act of March 6, 1893, and forthwith certify such apportionment to the several county auditors of said counties unless he shall be restrained by the order of this court. That an emergency exists for the granting of a restraining order
21 against the certification by said auditor of State of said valuation and assessment to the said county auditors without notice to said defendant auditor of State, for that as your orator has good reason to believe and does believe, if notice were given of an application for a restraining order said auditor would so certify said valuation and assessment to said several county auditors before the same could be made returnable and the matter heard by the court; and the mischief and injury intended to be prevented by this application would be accomplished.

Your orator further alleges that the certification of said assessment by said defendant to the several county auditors will work irreparable and lasting injury to said American Express Company and to your orator as president and shareholder therein and to each and all of the holders of shares or interest in its capital for whose benefit your orator herein stated as well as for his own and said company's benefit, brings this bill of complaint.

That the said act of certifying said assessment and apportionment by the defendant as said State auditor to the said several county auditors so about to be done by said defendant would be and is without authority of law and in violation of law in this to wit:

1. That said pretended statute of March 6, 1893, the title of which is hereinabove quoted, is invalid and void because in respect of express companies and especially of the said American Express Company, it amends a statute, namely, said act of March 6, 1891, the title of which is hereinabove quoted, which amended act was itself unconstitutional and void in that it violated section 8 of article 1 of the Constitution of the United States by attempting to regulate interstate commerce as conducted by the class of common carriers designated in said amended act as express companies.

22 2. That said pretended statute of March 6, 1893, under which said preliminary assessments which is about to be made final, apportioned and certified to the county auditors as aforesaid, was made, is in violation of article 1, sections 21 and 23 of the constitution of Indiana and section 1 of the 14th amendment to the Constitution of the United States in that by said pretended statute the respective shareholders of said The American Express Company, your orator and said company, are deprived of their property without due process of law.

3. That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the property of said The American Express Company in the year 1898, other than its tangible property, deprives the said American Express Company and each of its shareholders and especially your orator, of its and their property without due process of law and in violation of the provisions of the Constitution of the United States and of the constitution of the State of Indiana in that behalf in that it assesses for taxation purposes in Indiana personal property of said American Express Company owned and held by it in the city of New York and State of New York, consisting of bonds, stocks, mortgage notes and other like securities, no part of which property is now or ever has been used by said company in connection with its express business in Indiana or elsewhere, and no part of which is or has ever been a part of or connected with the plan of said company as an express company.

4. That said pretended statute of March 6, 1893, is in violation of section 1 of the 14th amendment to the Constitution of the United States in that by said statute the said American Express Company and each of its shareholders and especially your orator, are respectively denied the equal protection of the laws.

23 5. That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the property of said American Express Company in the year 1898, other than its tangible property in Indiana, denies to the said company and to each of its shareholders and especially to your orator the equal protection of the laws.

6. That by the method of procedure adopted and followed by said State board in assessing in 1898, said express company's property, and especially by its construing said act of 1893, to require that only the railroad mileage in the United States of the lines or routes operated by said company should be considered by said board as constituting the total mileage mentioned in said act, and thereby excluding all of the water routes and foreign routes operated by said company, the said company, its several shareholders and especially your orator are deprived of their property without due process of law and are denied the equal protection of the law in violation of the provisions of the Constitution of the United States guaranteeing said respective rights.

7. That said pretended statute of March 6, 1893, and said pretended preliminary assessment and valuation of the property of said American Express Company of said State board in 1898, if the same shall be made final and shall stand, are in contravention of section 1 of the 14th amendment to the Constitution of the United States and of section 8 of article 1 of the Constitution of the United States and of section 1 of article 10 of the constitution of Indiana respectively.

8. That by the method of procedure adopted by said State board in assessing in 1898 the property of said American Express Com-

pany in the State of Indiana, exclusive of its property by law required to be assessed by local taxing *of* officers, said board has in making the said assessment against said American Express
24 Company valued and assessed for taxation in said State of Indiana personal property of said company owned and held by said company and physically situate in the city of New York in the State of New York and not used by it in connection with its express business and forming no part of its express business plant and thereby when said assessment shall be made final the said company its several shareholders and especially your orator, will be deprived of their property without due process of law and will be denied the equal protection of the laws in contravention of the provisions of the Constitution of the United States guaranteeing said rights respectively.

Your orator further charges that the aggregate of the State, county and township taxes for 1898 in the county in this State where the aggregate levy is the smallest is in excess of 150 cents upon each $100.00 of assessed valuation and such aggregate in the county in this State where said aggregate is the highest is more than 300 cents upon each $100.00 of assessed valuation.

That said express company has paid all taxes levied and assessed upon and against its tangible property by the local taxing officers in the several counties where its lines are for the year 1897, so far as the same are due and is ready and willing to pay as the same shall mature all such taxes so *as* assessed for the year 1898, and said American Express Company is ready and willing to, and your orator for it and in his own behalf now offers so to do, to bring into this court for payment by the court's direction unto the proper State and county officers any and all taxes of whatsoever kind that have been levied or are leviable against said company in Indiana, except taxes levied and assessed against said company in the State of Indiana by the State board of tax commissioners in the year 1898; and your orator for said express company and in his own behalf is ready and willing to pay and now offers to secure the pay-
25 ment of all or such part of said last mentioned tax, to the approval of this court, that the court may upon final hearing of this cause find should be paid by said express company.

Your orator further alleges that said American Express Company is, and for many years last past has been, the owner of real estate situate in Marion county and State of Indiana, being the real estate mentioned in its said report filed in 1898, in the office of the auditor of state of the State of Indiana; that the said pretended assessment so made, and about to be made final, by the said State board, will cast a cloud upon its title to said real estate; that said express company has, and for many years last past has had, express lines or routes in and through said Marion county, and 57 other counties in Indiana and that actions or suits in each of said several counties to enforce the collection of said pretended taxes so as aforesaid about to be certified to the auditors of said counties against

said American Express Company or actions to restrain and enjoin the enforcement and collection of said alleged and pretended taxes would necessarily involve large expense and outlay of time and money to the State of Indiana and to the cities and towns in which said express lines and routes are and to said American Express Company and its shareholders by reason of the multiplicity of suits and that such multiplicity *of* avoided by this suit.

In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, to the end therefore that the defendant against whom process is hereinafter prayed, if he can, show why your orator should not have the relief hereby prayed, and that he the said defendant, may but not under oath, oath being hereby waived, to the best and utmost of his
26 knowledge, remembrance, information and belief, full, true, direct and perfect — make, to all and singular the matters and things hereinbefore set forth and alleged, as fully and completely as if the same were here repeated, and he, the said defendant, thereunto severally and specifically interrogated paragraph by paragraph; and that a temporary injunction may forthwith issue herein, without notice, against the defendant Americus C. Daily, as auditor of state of the State of Indiana enjoining and restraining him from certifying *him* to each or any or all of the auditors of the respective counties in Indiana where said American Express Company has express lines or routes valuations, assessments and taxes made and levied by said State board against said American Express Company in the year 1898 or any part of such valuations, assessments and taxes until a hearing can be had herein and that upon the final hearing of this cause this defendant be perpetually enjoined from certifying valuations, assessments and taxes made, levied and assessed by said State board against said American Express Company in and for the year 1898, and that the cloud cast upon the property of said American Express Company in Indiana by reason of said pretended assessment of said State board in 1898 and the lien thereby attempted to be created upon its property, real and personal, in Indiana, be removed; that said taxes, valuations and assessments be respectively declared invalid and void, and that there be granted unto your orator all other proper relief in the premises.

And may it please your honors to grant unto your orator the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, Americus C. Daily, as auditor of state of the State of Indiana, commanding him at the proper time, and under the proper penalty, both to be named therein, to be and appear in this honorable
27 court, then and there to answer, all and singular the matters and things hereinbefore stated and charged, and to stand to perform and abide by such further order, direction and decree as may be made against him.

And your orator, as in duty bound, will ever pray, etc.

JAMES C. FARGO,
As President of American Express Company,
By BAKER & DANIELS,
His Solicitors.

BAKER & DANIELS,
Solicitors for Complainant.
CARTER & LEDYARD, *Of Counsel.*

UNITED STATES OF AMERICA, } ss:
District of Indiana, }

R. D. Hughes being duly sworn, on his oath says he is general superintendent of the American Express Company mentioned in the foregoing bill of complaint and the same person who signed the tax reports of that company filed with the auditor of state of the State of Indiana in the year 1898, as in said bill of complaint mentioned; that he is authorized to and does sign this affidavit in behalf of the complainant in said cause; that he has read the foregoing bill of complaint and knows its contents and that the matters and facts therein stated are true as he is informed and verily believes.

R. D. HUGHES.

Subscribed and sworn to this 24 day of August, 1898.

NOBLE C. BUTLER,
Clerk U. S. Circuit Court, District of Indiana.

And at the same time on said 24th day of August, 1898, before Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

28 Now comes James C. Fargo, as president of the American Express Company and files his verified bill of complaint herein against Americus C. Daily, as auditor of state of the State of Indiana, and process thereon having been issued the said complainant now presents an application for a temporary restraining order against said defendant commanding him, until the further order of this court not to certify to any county auditor in Indiana any tax, valuation or assessment made by the State board of tax commissioners of Indiana in 1898 against the American Express Company.

And the court having heard argument of counsel and an emergency existing therefor now orders that said defendant Americus C. Daily, auditor of State of Indiana, and his deputies refrain from so certifying any such tax, valuation or assessment until the matter is further heard and until the court shall further order. The further hearing of this matter is set for next Monday August 29th, 1898, at 10 o'clock a. m. unless another time shall be agreed upon.

This order shall take effect when process and a certified copy of this order shall be served upon the defendant.

And afterwards, to wit, at the May term of said court, on the 29th day of August, 1898, before Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Comes now the complainant by counsel and by leave of court files his supplemental bill of complaint herein, in the words following, to wit:

29 JAMES C. FARGO, as President of the American Express Company,
vs.
AMERICUS C. DAILY, Auditor of State of the State of Indiana.

To the honorable judges of the circuit court of the United States for the district of Indiana:

Humbly complaining, showeth unto your honors your orator James C. Fargo, as president of the American Express Company, that on the 24th day of August, 1898, your orator filed his original bill of complaint in this honorable court against Americus C. Daily as auditor of state of the State of Indiana and now brings and exhibits this his supplemental bill of complaint and states that he now charges all of the matters and facts charged in his original bill of complaint herein and charges the following further facts which transpired since said original bill of complaint was filed, namely:

That on or before Friday, August 26th, 1898, one —— Wells, Esq., appeared before said State board of tax commissioners as the representative of Wells, Fargo Express Company and in behalf of that company and after having stated the total length of the lines and routes of the said Wells-Fargo Company, including water routes, both coast line and internal, and after stating that of the total $8,000,000 of capital of said company, $4,000,000 was used in the banking business conducted by it in the State of California and not used in the conduct of its said express business, he was asked by members of said board whether the ocean mileage included any trans-Atlantic or trans-Pacific routes and he stated that it did not, and he was asked by said board whether his company carried freight to Europe and sold money orders payable in European cities
30 and towns and he answered yes but that it turned its freight over to European express companies or carriers at sea-ports and did not do an interior business in Europe; he was then asked by the State board whether the American Express Company, the National Express Company and the United States Express Company respectively conducted their so-called European express business in the same way and he answered that he thought they did.

That no representative, agent or employé of the said American Express Company, or the National Express Company or of this complainant was present when said statements were made before said board or had any knowledge that such inquiries or statements

had been made until after said board had adjourned, namely; until after August 26th, 1898; or had any knowledge or information that such inquiries or statements were to be made before they were made.

That said State board of tax commissioners overruled the protest against the said assessment of $450. per mile on the 1798.34 miles of lines or routes of said American Express Company filed by it as charged in the original bill of complaint and disallowed the said American Express Company's petition for a rehearing of said assessment and permitted the same to stand and certified the same to the auditor of State as the assessment of said board for the year 1898 of the 1798.34 miles of lines or routes of the American Express Company in the State of Indiana; that thereafter and on the 26th day of August, 1898, as by the statutes of Indiana in that behalf required, the said State board of tax commissioners adjourned *sine die* for the year 1898; that the said certification of the said valuation or assessment is now in the possession of the said auditor of State and the valuation and assessment so aforesaid made and certified to him will be apportioned by him and certified to the several
31 county auditors in the State in whose counties the lines or routes of said American Express Company laid and were on the 1st day of April, 1898.

Wherefore your orator prays for the same relief asked in said original bill the same as though its prayer were here specifically repeated and your orator prays for all other proper relief and will forever pray, etc.

JAMES C. FARGO,
As President of the American Express Company,
By BAKER AND DANIELS,
His Solicitors.

BAKER AND DANIELS,
Sols. for Compl't.
CARTER AND LEDYARD, *Of Counsel.*

UNITED STATES OF AMERICA, }
District of Indiana, } ss:

R. D. Hughes being duly sworn on his oath says he is general superintendent of the American Express Company mentioned in the foregoing supplemental bill of complaint and the same person who signed the tax reports of that company filed with the auditor of state of the State of Indiana in the year 1898, as in said supplemental bill of complaint mentioned; that he is authorized to and does sign this affidavit in behalf of the complainant in said cause; that he has read the foregoing supplemental bill of complaint and knows its contents and that the matters and facts therein stated are true as he is informed and verily believes.

R. D. HUGHES.

32 Subscribed and sworn to this 29th day of August, 1898.

NOBLE C. BUTLER,
Clerk U. S. Circuit Court, District of Indiana.

And afterwards, to wit; at the May term of said court, on the 22nd day of September, 1898, before the Honorable William A. Woods and the Honorable John H. Baker, judges of said court, the following further proceedings in the above entitled cause were had, to wit:

Comes now the complainant by counsel and files the affidavit of James F. Fargo herein, in the words following, to wit.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss:

James F. Fargo, being duly sworn says that he is and on the 1st day of April, 1898, and prior thereto, was assistant treasurer of the American Express Company, a voluntary unincorporated association, having its principal office and place of business in the city of New York, in the State of New York. That deponent has read the annual return made on behalf of the American Express Company to the auditor of state of the State of Indiana, for the year 1898, and that all the statements therein contained are true.

That in item nine (9) annexed to said return, the following statement occurs:—"On the 1st day of April, 1898, this company owned investments in securities which were not and had never been within the State of Indiana, but which were kept and always had been kept by the company, so long as it had owned the same, in the city of New York where its principal office is situated. No part of said investments was used by the company on the 1st day of April, 1898, or during the year then ending, in its express business,
33 and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner and for the like purposes as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgages upon real estate, and moneys loaned on collateral, which were on the 1st day of April, 1898, of the market value of $15,501,344.33.

All of said stocks, bonds, mortgages and other personal securities or evidences of indebtedness are in possession of this company in the city of New York."

That all of the above statements are true to deponent's own knowledge.

That the stocks, bonds and other securities making up the said amount of $15,501,344.33 on the 1st day of April, 1898, were as follows:

	Market value.	Cost.
$2,925,000.00 Railroad Co. bonds.....	$3,282,750.00	3,204,855.99
30,904 shs. Railroad Co. stock.....	4,617,914.46	4,398,189.59
56,777 shs. Express & Transportation Co. stock.....	6,579,851.17	2,573,413.39
Miscellaneous stock	5,000.00	5,000.
Bills receivable, being demand loans to various parties	856,490.00	856,490.
Bonds & mortgages on real estate loans.....	159,338.70	159,338.70
	$15,501,344.33	11,197,287.67

That all of the said personal property above described, which was held by the American Express Company on the 1st day of April, 1898, was acquired by it prior to said date and that the amount stated as the market value of the said personal property on
34 the said 1st day of April, 1898, was the actual value of said property on said last named date.

That none of said property was on the 1st day of April, 1898, or theretofore at any time in the State of Indiana, nor was any of it used in the business of the said American Express Company as a common carrier. That all of said personal property of the value on the 1st day of April, 1898, of $15,501,344.33 was at that time and theretofore and still is used only by the said American Express Company as an investment of so much money for the purposes of income as the same would be used by any individual not engaged in the express business. That no part of said property is in any way used by the said express company in the maintenance and operation of its express business, nor are the contracts made by said express company with the various railroad companies over which said express company carries on its business, or payments made under any such contracts in any way dependent upon the holding by the American Express Company of the said amounts of personal property, or any portion thereof. That the business of the American Express Company in shipping bonded freight and express matter under its transportation bonds with the United States Government from seaports to ports of entry in the interior of the United States is but a very small proportion of its daily or yearly transactions, and that such transportation bonds to the United States Government are only accepted by the Treasury Department of said Government upon the said express company furnishing responsible sureties on its said transportation bonds, which sureties are obliged to qualify in an amount of twice the sum of such transportation bonds. That the said American Express Company is not called upon and never has been called upon to make use of or put up or pay any part of its property valued as aforesaid at the sum
35 of $15,501,344.33 or any money whatsoever, in connection with its business of transporting express matter in bond.

J. F. FARGO.

Sworn to before me this 15th day of September, 1898.

WALTER T. TAYLOR,
[SEAL.] *Notary Public, N. Y. Co.*

And afterwards, towit: at the May term of said court, on the 26th day of September, 1898, before the Honorable William A. Woods and the Honorable John H. Baker, judges of said court, the following further proceedings in the above entitled cause were had, towit:

Comes now the complainant by counsel and files the affidavit of Charles G. Clark and James C. Fargo herein, in the words following towit:

UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

Charles G. Clark, being duly sworn, says that he is, and on the first day of April, 1898, was, and for many years past has been the treasurer of the American Express Company, a joint stock association organized under the laws of the State of New York, which association, by James C. Fargo, its president, is the complainant herein.

Deponent further says that he has examined the annual return made on behalf of the American Express Company to the auditor of state of the State of Indiana for the year 1898, and that the statements therein contained as to the investments of the said American Express Company in securities on the first day of April, 1898, are true of deponent's own knowledge, except that an error was made in the accounting department of the American Express Company
36 in preparing said figures, the character of which is hereinafter set forth, and which error being corrected, leaves the figures as stated in this affidavit.

That the amount of such investments held by the American Express Company on April 1, 1898, was stated to be in said return of the market value of $15,501,344.33 but that the actual market value of the said securities at that time was the sum of $15,143,344.33. That the said investments constituted no part of the said express company's express plant and were not used in any respect in the business of said express company, but were merely ordinary investments held by said company in like manner and for like purposes as similar investments are held by individuals and corporations not engaged in the express business. That said investments on the first of April, 1898, consisted of bonds and mortgages to secure loans on real estate of the actual market value of $159,338.70; of bills receivable consisting of demand loans made to various parties of the actual market value on April 1, 1898, of the sum of $856,490.; and of certain railroad and other bonds and stocks of the market value on April 1, 1898, of $14,127,515.63.

That deponent has prepared and has annexed to this affidavit a schedule marked "Schedule A" to be taken as a part of this affidavit, in which are shown specifically the items of stocks, bonds and securities of said market value of $14,127,515.63. That in said

schedule deponent has placed the date at which said securities were purchased by the American Express Company, or, if the same were purchased on several dates, either the dates on which they were severally purchased, or the dates between which the several securities were purchased. Deponent has also stated in said schedule the par value of all bonds and stock so held by said express company as aforesaid, and has also truly and accurately stated the cost of said stocks, bonds and other securities as specifically itemized in
37 said schedule, and as appears on the books of said American Express Company.

Deponent further says that when a statement was made up in the treasurer's office for the purpose of making up the return to be made to the State of Indiana for the year 1898, a clerical error occurred whereby the clerk making up said statement omitted to note the fact that 2,000 shares of the Lake Shore and Michigan Southern which had been held for several years by the company, and which had cost the company $208,987.50 and which was of the market value of $358,000, had been sold by said company on the 28th of February, 1898, and said stock at its said value was erroneously included as being on hand among the assets of said company on April 1, 1898.

Deponent further says that the said error was not discovered by the officers of said company until the affidavits of James F. Fargo, the assistant treasurer of said company, verified herein on the 15th day of September, 1898, and the affidavit of James C. Fargo, the complainant, verified herein on the 22nd day of September, 1898, had been made. That in both of said affidavits the market value of the securities held by the American Express Company on April 1, 1898, is stated at the sum of $15,501,344.33 whereas the same should have been stated, as the fact was on the day last named, at the sum of $15,143,344.33.

Deponent further says that on further verifying the cost of the securities held by the said company on April 1, 1898, and on checking the same off with the books of said company, deponent has discovered that a further clerical error was made in stating the cost value of 1200 shares of the Delaware and Hudson Canal Co. stock, held by said express company, the cost having been taken in the preparation of the said statement at the market value thereof, namely; $128,400. instead of the actual cost which was the
38 sum of $124.335.88 so that the cost of all the railroad stocks held by said express company on April 1, 1898, which was stated in said affidavit of James F. Fargo at the sum of $4,398,189.59 should have been stated, making allowance for the two errors above referred to, at the sum of $4,185,137.97.

Deponent further says that he has to the best of his knowledge stated the fair market value of each class of securities held by said American Express Company on April 1, 1898, as set forth in Schedule A hereto annexed, and that in case any particular security had no market value, depon- t has stated the actual value of said security to the best of his knowledge.

Deponent further says that no portion of such investments of the market value of $15,143,344.33 was on the first day of April, 1898, or theretofore, in the State of Indiana, or used in the business of the American Express Company as a common carrier.

CHAS. G. CLARK.

Sworn to before me this 24th day of September, 1898.

GEO. E. CARPENTER,
Notary Public, No. 25, Co. N. Y.

[SEAL.]

EXHIBIT A.

April 1", 1898. American Express Co.

Date purchased.	Am't.	Bonds.	Par value.	Market rate.	Cost.	Market value.
Ap'l 22/84	$200,000 00	Dakota Central R. R.		@ 115	$226,062 50	$230,000 00
Aug. 10/86	200,000 00	Cincin. Ind. St. L. & Chic. R. R		101	200,000 00	202,000 00
Feb'y 24/88	100,000 00	New York & No. R. R.		126	104,500 00	126,000 00
Apr. 5/88	150,000 00	Morris & Essex R. R.		141	204,875 00	211,500 00
Jan. 23/91	150,000 00	Kal. All. & Gr'd Rapids R. R.		120	165,291 67	180,000 00
Dec. 18/91	250,000 00	Lehigh Valley Terminal R. R.		112	268,680 57	280,000 00
Jan. 20/92	100,000 00	Pittsburg, McK'sp't & Y. R. R.		140	128,316 67	140,000 00
Feb. 1/92	100,000 00	Chicago & Western Indiana R. R.		117	116,000 00	117,000 00
May 9/92	100,000 00	Toledo, St. Louis & Kas. City R. R.		86	99,000 00	86,000 00
May 18/92	75,000 00	Mich. Central (Detroit B. C. br'ch) R. R.		120	83,489 58	90,000 00
June 1/92	50,000 00	St. Paul & No. Pac. R. R.		126	61,535 00	63,000 00
Aug. 26/92	250,000 00	Central R. R. of New Jersey		114	277,375 00	285,000 00
June 1/93	100,000 00	Long Dock Co.		136	123,500 00	136,000 00
Jan. 5/94	100,000 00	Bangor & Aroostook R. R.		90	90,000 00	90,000 00
July 17/96	100,000 00	Mil. & Lake Winnebago R. R.		100	100,000 00	100,000 00
Oct. 22/97						
Nov. 1/97	200,000 00	West Shore Railroad		109	218,700 00	218,000 00
Oct. 26/97	250,000 00	Lake Shore & Mich. So. R'way		102	259,655 00	255,000 00
Oct. 28/97	250,000 00	New York Central & Hudson River R. R.		104½	259,375 00	261,250 00
40						
Nov. 18/97	200,000 00	Mich. Central (Air Line Div.) R. R.		106	218,500 00	212,000 00
	$2,925,000 00					
	No. shares.					
Nov. 25/68 to		Stocks.				
Jan. 17/84	38,481	American Express Co.	100	125	1,730,312 69	4,810,125 00

July 31/71 to Jan. 17/84	12,260	Merchants Despatch Trans. Co.	100	100	700,970 00	1,226,000 00
Feb'y 21/84	333	Intercolonial Express Co.	100		8,334 00	8,334 00
Dec. 11/90	1,000	Michigan Central R. R.	100	106	90,025 00	106,000 00
" "	1,000	Chicago & No. Western R. R.	100	119	101,925 00	119,000 00
Apr. 22/91	1,200	Delaware & Hudson Canal Co.	100	107	124,335 88	128,400 00
" 23/91	800	Adirondack Express Co.	50	50	36,824 80	40,000 00
" 25/93 to Mar. 28/98	20,689	Boston & Maine R. R.	100	163	3,314,769 63	3,372,307 00
Feb. 15/98	3,000	N. Y. Cent'l & H. R. R. R.	100	111	352,875	333,000 00
Jan. 3/94	108	Wickes Refrigerator Car Co.			3,392 17	3,392 17
Jan. 2/94	2,000	Bangor & Aroostook R. R.	100		200,000	200,000
Apr. 1/95	4,795	National Express Co.	100		80,971 90	479,500
M'ch 31/91	½	Int. Jacksons Express.			12,500	12,500
41						
Jan. 19/92		Value in United States Hotel, Saratoga, N. Y.			5,000 00	5,000 00
July 17/96	15 shrs.	Milwaukee & Lake Winnebago R. R. (Manitowoc Division).			1,207 46	1,207 46
					$9,968,299 52	$14,127,515 63

WILLIAM H. HART, AUDITOR, ETC.

14259
24

42 UNITED STATES OF AMERICA, } ss:
Southern District of New York, }

James C. Fargo, being duly sworn, says that he is the president of the American Express Company, a joint stock association consisting of more than seven persons, organized under the laws of the State of New York, and the complainant in the above entitled cause. That deponent has read the bill of complaint herein filed on the 24th day of August, 1898, and that the matters and facts therein stated are true.

Deponent further says that he has read the affidavit of the defendant Americus C. Daily herein, verified the 29th day of August, 1898; that said affidavit does not truthfully and accurately describe the manner in which the American Express Company conducts its express business between the United States and other foreign countries, nor does said affidavit truthfully and correctly explain why the American Express Company has returned the total length of its lines for the year 1898 as 163,063 miles, being a very large excess over the length of mileage returned for the year 1897. And deponent further says that the facts in respect to the carrying on by the said American Express Company of the general express business between the United States and foreign countries, are as follows:

The American Express Company has accepted express shipments from points in the United States to a large number of foreign countries for a number of years, and up to the year 1896 such business was transacted by the American, Adams and United States Express Companies in the same manner.

In the latter part of the year 1896, however, the American Express Company established express agencies in the cities of London, Paris, Liverpool and Southampton; that is, agencies conducted by its own exclusive employees in the service of the American Express Company, such offices being as much a part of the company's
43 organization as its agencies maintained in Chicago, New York, Boston or Indianapolis. Since that date the American Express Co.'s shipments to, as well as from the principal countries of Europe have been forwarded via the ports of New York and Boston from interior places as well as from the sea ports mentioned, direct to the company's agents at the cities abroad heretofore mentioned, thus placing the American Express Company's transactions to and from Europe upon the same basis as its transactions to and from points within the United States, and altering entirely the mode, methods and means for the transportation of its foreign shipments between the United States and Europe and other points abroad.

The American Express Company issues for express packages carried its through receipts, and gives through bills of lading to destination in all foreign countries reached by it.

Under these bills of lading the liability of the express company in respect to the packages carried continues until the packages reach their destination, whereas in the case of domestic receipts or bills of lading the liability of the American Express Company is expressly

made to terminate as soon as the package is delivered to a connecting line.

In regard to all foreign business of the American Express Company, the property carried is in the control of the company from the time of leaving the United States until destination is reached, either being handled by the express company's own employees in France or Great Britain, or by forwarding agents in other foreign countries, who forward the packages for the American Express Company over such routes as it may select from time to time.

Since the latter part of 1896 the American Express Company has generally entered into contracts and agreements with the various steamship lines crossing the Atlantic, either for special rates
44 or for special privileges and facilities in the handling, care, and—or—quick delivery of the company's traffic handled by such lines.

All consignments of European freight carried by the American Express Company for and from the United Kingdom of Great Britain and Ireland, France, Switzerland and a portion of Italy are made through exclusive agents of the American Express Company in England and France, and after and on October 1, 1898, this company will dispense with its agency arrangements now existing in Germany and will establish its own exclusive offices at Hamburg and Bremen. That part of the European express business now and on the 1st day of April, 1898, handled by the American Express Company's European exclusive agents comprises more than ninety per cent. of the entire business transacted by the American Express Company between the United States and European countries.

Deponent further says that in England the American Express Company has never had any contract or dealings of any kind with the firm of Sutton & Co., and that firm has never forwarded any packages for said American Express Company.

In the German Empire the American Express Company has never had any dealings with nor forwarded packages by Heinrich Becker & Co.

That so far as the foreign business of the Adams Express Company is concerned, as deponent is informed and believes, that company never has either maintained, or claimed to have maintained, a foreign organization or even agencies, all business of this nature as controlled by that company being turned over by it at New York to a local foreign express company for transmission abroad.

As the complete establishment of this company's European department abroad was not effective and in working order until
45 the spring of 1897, this company did not, for that reason claim in its report made to the State of Indiana for the year ending April 1, 1897, and of the ocean mileage which was shown in its report for the year ending April 1, 1898.

And deponent further says that all of the statements of the said Americus C. Daily as to the manner in which the said American Express Company is alleged to carry on its express business beyond the limits of the United States, except in so far as the said state-

ments coincide with the above statement of deponent in respect to such methods of business are in fact untrue.

Deponent further says that it is not true that the lines maintained by it outside of the United States are not express lines or routes in the ordinary acceptation of the term, but on the contrary thereof deponent says that outside of the United States the business of the American Express Company is carried on as above indicated, and that in so carrying out the said express business the American Express Company maintains and operates express lines and routes in the common acceptation of the term, between the United States and foreign countries.

That in the mileage of express routes beyond the United States, only mileage between the United States and sea ports of foreign countries has been reckoned, and not mileage within such foreign countries.

Deponent further says that he has read the affidavit of James F. Fargo, assistant treasurer of the American Express Company, verified the 15th day of September, 1898, and that the facts stated in said affidavit are true, and that all the securities and other personal property of the said American Express Company specified in said last named affidavit as being on the 1st day of April, 1898, of a market value of $15,501,344.33 were on the said date,
46 and for long prior thereto had been, in the city of New York, where the principal office of the American Express Company is, and had never been at any time in the State of Indiana; that said property on the 1st day of April, 1898, and prior thereto was in the hands of the American Express Company as an investment of so much money for purposes of income for the said company as the same would be used by any individual not engaged in the express business, and that no part of said personal property valued as aforesaid at the sum of $15,501,344.33 was on the 1st day of April or at any time prior thereto used by the American Express Company in the maintenance and operation of its express business as a common carrier or otherwise, and that all of said property on the 1st day of April, 1898, was in the hands of the said American Express Company in the city of New York and kept by it in its vaults in said city specially hired by it for securely and safely keeping the said personal property.

Deponent further denies that it is a fact, as alleged by the said Americus C. Daily, in his aforesaid affidavit, that it would be impossible to transact the business of the American Express Company, or any extensive express business in the United States, or elsewhere, unless the said express company had and maintained constantly ready money in very large amounts or securities readily convertible into cash; and deponent further denies that any such holdings as are in the possession of the American Express Company are necessary to render it able to readily pay for losses, or to give bonds, or to meet cash payments to carriers, or to give to the said express company credit to enable it to get business.

And deponent further denies that the said sum of over fifteen and

one half millions of dollars in securities is held and used by the American Express Company as part of the necessary capital
47 of its business, and that the same is employed in the management of said business or is essential to its further profitable continuance; and deponent says that the facts as to the way in which the said property is held by said express company are correctly set forth in the affidavit of James F. Fargo heretofore referred to.

And deponent further denies that the securities and property held by the American Express Company as aforesaid of the value of upwards of fifteen and one half millions of dollars, are used and employed in the business of the American Express Company in the city and State of New York; and deponent further denies that the same are used in the management and conduct of the business of the said express company generally.

And deponent further denies that the said securities form a part of its business and that they are in constant or any use whatsoever, wherever said company does business, whether in the State of Indiana or in the State of New York, or elsewhere, and deponent further denies that it is fact that if such securities were held and retained absolutely in the city and State of New York, and were not attainable for the purpose of meeting liabilities and giving bonds in other parts of the United States, and especially in the State of Indiana, that it would be difficult, if not impossible, for the American Express Company to secure and successfully transact an expressage business in the State of Indiana and elsewhere than in the State of New York, but on the contrary thereof, deponent alleges the fact is wholly otherwise, and that said securities are held by the said American Express Company under the circumstances above stated, and are not necessary, and are not in constant use or any use whatsoever, in deponent's business outside of or within the State of New York.

JAMES C. FARGO.

48 Sworn to before me this 22nd day of September, 1898.

GEO. E. CARPENTER,

[SEAL.] *Notary Public, No. 25, Co. N. Y.*

And afterwards, towit; at the November term of said court, on the 25th day of January, 1899, before the Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Come now the parties complainant and defendant by their respective solicitors of record herein and it is shown to the court that the term of office of the defendant Americus C. Daily as auditor of state of the State of Indiana has now expired and that William H. Hart has succeeded him as auditor of state of the State of Indiana, has duly qualified and has entered upon the duties of his said office.

And now in open court the said William H. Hart as auditor of state of the State of Indiana in person and by his solicitor herein. W. L. Taylor, attorney general of the State of Indiana, also appears

herein and consents that he, as such auditor, be made party defendant herein, waives the issuance and service of process and consents that the restraining order herein shall be, by a proper order of court herein, made as binding upon him as such auditor and upon his deputies as it was upon the said Americus E. Daily as such auditor, and upon his deputies, immediately before he ceased to be such auditor, and that, without service upon him of a copy of said original order or of said order now to be made.

And thereupon the complainant assenting, it is ordered by the court that the said William H. Hart, as auditor of state of the State of Indiana, be, and he hereby is substituted as the defendant
49 in this cause in the place of said defendant Americus C. Daily; and it is further ordered that the restraining order heretofore entered in this cause and duly served upon said original defendant Americus C. Daily, as such auditor, be, and the same is now made as binding upon said substituted defendant William H. Hart, as auditor of state of the State of Indiana, and upon his deputies, as it was upon the said Americus C. Daily, as auditor of State, and his deputies, immediately before he ceased to be such auditor of State and that this order shall take effect and be binding upon said substituted defendant William H. Hart, as such auditor and upon his deputies, without the service of a copy upon him, he in person and by solicitor being now present in court at the time of the making of this order.

And afterwards, to wit, at the May term of said court, on the 22nd day of August, 1899, in recess thereof, the following further proceedings in the above entitled cause were had, to-wit:

Come now the parties the complainant by Baker & Daniels, his solicitors, and the defendant by William L. Taylor, attorney general of the State of Indiana, his solicitor, and file a stipulation herein signed by the parties by their respective solicitors as follows:

Whereas in the year 1898, the State board of tax commissioners of the State of Indiana, made a certain assessment and valuation for taxation purposes against the American Express Company whereby it valued the lines or routes of that company, in Indiana, at $450.00 per mile; and whereas thereafter the above named complainant as president of the said American Express Company filed in the circuit court of the United States for the district of Indiana sitting in chancery in cause No. 9620 his certain bill in equity against
50 Americus C. Daily, then auditor of state, of the State of Indiana, alleging that said assessment was for divers reasons, in said bill set out, void and seeking to enjoin said auditor of State from certifying said assessment to the various county auditors of the State of Indiana:

And whereas in said cause the said court granted a preliminary injunction, which is still in full force, restraining said auditor from so certifying said assessment: And whereas afterward and while said injunction was in full force said Daily's term of office as such auditor expired and the above named defendant, William H. Hart,

as his duly elected and qualified successor in said office became and has ever since remained and now is the auditor of state of the State of Indiana: And whereas after said William H. Hart became such auditor, by proper proceedings in said cause, he was by substitution, made the defendant in said cause and said injunction was by proper proceedings in said cause made as effective against him as such auditor as it had been against said Daily while he was auditor which injunction still stands in full force against said William H. Hart, present auditor of state of the State of Indiana.

And whereas the State board of tax commissioners of the State of Indiana has in the year 1899, again made a certain assessment and valuation for taxation purposes for the year 1899 against said American Express Company whereby it has again valued the lines and routes in Indiana of that company at $450.00: And whereas the said complainant James C. Fargo as president of said American Express Company, has prepared and is by his solicitors of record in said cause, Baker & Daniels, about to file in said court in said cause his supplemental bill or bill in the nature of a supplemental bill, which has been exhibited to said defendant, William H. Hart, auditor of state of the State of Indiana, and

51 to said William L. Taylor, attorney general of the State of Indiana, his solicitor of record, in said cause in which, and upon the same ground stated in said original bill in said cause, said complainant Fargo to remove the doubt, if any, that the present injunction embraces a prohibition against the certification of the said assessment of 1899 to the several county auditors, seeks to enjoin the said William H. Hart as auditor of state of the State of Indiana from certifying to the several county auditors of Indiana the assessment and valuation for taxation purposes so made in 1899 by the said State board of tax commissioners and said complainant has expressed the purpose to press a motion for such injunction to an immediate hearing: And whereas the said defendant does not object to said application being made by way of a supplemental bill in said cause instead of an original bill in a new suit between the same parties in the said court, but for convenience of parties agrees with complainant that, owing to the fact that the original and supplemental bill- seek to settle but one dispute which now by the said assessment of 1899, relates to the year 1899 as well as the year 1898, the whole controversy should be determined in this suit: And whereas it is inconvenient for both parties to now present to the court the application for an injunction contained in said supplemental bill:

Therefore the parties now here stipulate as hereinafter stated and agree that this stipulation shall become a part of the record in said cause:

1. The complainant may and now does file his said supplemental bill with the same effect as though permission to file it had been first given by said court:

2. The defendant will not certify the said assessment made by the State board of tax commissioners in 1899 or any part of it to the

auditor of any county in Indiana until the court shall have heard and ruled upon the application for a temporary injunction or restraining order contained in said supplemental bill but the
52 defendant will until said application is so ruled upon, treat the present injunction as having been extended by the court to cover the said assessment made by said State board of tax commissioners in the year 1899 against said American Express Company.

(3.) That the parties will both make diligent effort to bring said application to a hearing as soon as the judge before whom the case is pending, or other proper judge, can be present in said court and can hear it.

Dated Indianapolis, Indiana, August 22nd, 1899.

BAKER AND DANIELS,
Sols. for Complainant.
WILLIAM L. TAYLOR,
Attorney General of Indiana, for Defendant.

And now the complainant in pursuance of said stipulation files his supplemental bill or bill in the nature of a supplemental bill herein in the words and figures following:

53 To the honorable the judges of the circuit court of the United States for the district of Indiana:

Your orator, James C. Fargo, as president of the American Express Company and a resident citizen of the State of New York, brings this his bill of complaint against William H. Hart, as auditor of state of the State of Indiana and a resident of said State of Indiana and humbly complaining, showeth as is shown in his original bill herein unto your honors by this his supplemental bill or bill in the nature of a supplemental bill that your orator is the president and a shareholder of the American Express Company which is a joint stock company or association organized under the laws of the State of New York many years ago and continuously from the date of its organization to the present time existing under said laws; that said company has its principal place of business in the city of New York in the State of New York and in said city its meetings are held and its books and general assets are kept and owned; that said company is composed of more than 3,000 members or copartners who own 180,000 equal shares or interests in said company represented by certificates having a nominal value for the purposes of the agreement under which said company was constituted of $100.00 each and which for several years last past have had a market value of not less than $100.00 per share. That all of said members or shareholders have a joint ownership and interest in the cause of action hereinafter stated but they are too numerous to be joined as parties hereto and it is impracticable to bring them all before the court because they are widely scattered and live in different parts of more than 15 States of the United States and that some of them are now temporarily beyond seas and your orator therefore as such president and member or shareholder brings and files this his supplemental bill of com-

plaint or bill in the nature of a supplemental bill not
53 only on his own behalf but on behalf of the said company and each and all of its members;

That said company is and for many years last past has been conducting the business of a common carrier popularly and technically described as the express business, that is to say, the quick and safe transportation and transmission over public routes and highways by means of railways, steam-boats, steamships and other public carriages of moneys, bank-bills, bonds and securities and packages containing articles of greater or less value as contradistinguished from ordinary freight; that for more than 25 years last past said company has been and still is conducting such express business in the State of Indiana and that in the conduct of its said business said The American Express Company has for many years last past carried, transported and transmitted packages of money, bonds, securities, goods, wares and merchandise into the State of Indiana from the States of New York, Pennsylvania, Ohio, Illinois and many other States of the United States and from the State of Indiana into the said other States of the United States and through the State of Indiana from and to other States of the United States and still continues so to carry, transport and transmit such packages and property; that it neither owns nor operates any railroads or means of carriage of its own but does said business under contracts with railroad companies and other common carriers owning and operating railroads, rolling stock, ships and other public conveyances;

Your orator now further showeth that the defendant William H. Hart, is and at the time hereinafter mentioned, was the auditor of state of the State of Indiana.

That on the 6th day of March, 1893, an act of the General Assembly of the State of Indiana entitled "An act supplementary to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith and declaring an emer-
55 gency;' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, express and fast freight joint stock associations, companies, co-partnerships and corporations, transacting business in the State of Indiana, repealing section- 68, 69, 70 and 71 of said act and all laws in conflict therewith and declaring an emergency;" having been duly approved by the governor, went into effect in the State of Indiana as a statute of said State, and the same has never been repealed or amended by any subsequent legislative enactment; that pursuant to the provisions of section 3 thereof, said The American Express Company in the year 1899 duly filed in the office of the auditor of state of the State of Indiana its report for said year 1899, that a copy of said report is as follows:

56 Express companies.

1899.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests, 180,000 of $100. each	$18,000,000.
Item 2. No. of interests issued and outstanding 180,000 interests.	
a. Par or face value of each interest, all interests are of equal value	$100.
Item 3. Principal place of business New York, in the State of New York.	
Item 4. Market value of each interest on the 1st day of April, 1899	$140.00

a. If shares have no market value then state actual value thereof.

This company is not a corporation but a partnership or joint stock association organized under articles of agreement between its members.

It possesses no rights, privileges or franchises other than such as are enjoyed by any private individual or association of individuals.

Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, partnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	Description of real estate, structure, machinery, etc.	Assessed value.
Boone	Personal property	$20.
Bartholomew	" "	75.
Clinton	" "	250.
Decatur	" "	150.
57 Delaware	Personal property	460.
Elkhart	" "	245.
Floyd	" "	340.
Fountain	" "	45.
Grant	" "	329.
Henry	" "	50.
Jasper	" "	30.
Lake	" "	300.
Laporte	" "	180.
Lawrence	" "	200.
Montgomery	" "	270.
Madison	" "	495.
Marion	" " & real estate	10,100.
Monroe	" "	125.
Orange	" "	30.
Pulaski	" "	75.
Putnam	" "	300.
Randolph	" "	245.
St. Joseph	" "	285.
Shelby	" "	135.
Tippecanoe	" "	525.
Vigo	" "	80.
Wabash	" "	220.
Washington	" "	20.
White	" "	35.
		$16,334.

The above personal property consists of horses, wagons, harness, safes, etc.

The following property, of the like description, is in use by the National Express Company, and is assessed to it for local taxation, but actually belongs to this company—being used by the National Express Company as agent of this company.

Allen	Horses, wagons, office fixtures, scales, safes...	920.
Elkhart	" " " " " " ...	208.
Howard	" " " " " " ...	205.
Wells	" " " " " " ...	208.
		$17,875.

58 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

55/61 Hudson St	New York city...	Rented ...	$240,000.
157 Hudson St	New York city...	Rented ...	13,000.
365/367 Broadway	New York city...	Rented ...	375,000.
Broome & Elm Sts	New York city...	Rented ...	175,000.
Corner Main & Erie Sts	Buffalo, N. Y....	Rented ...	80,000.
Exchange St	Buffalo, N. Y....	Rented ...	16,800.
Canal & Friend Sts	Boston, Mass....	Rented ...	158,500.
Larned St. First & Cass	Detroit, Mich....	Vacant ...	9,000.
Marshall St	Paterson, N. J....	Vacant ...	1,500.
			$969,980.

The foregoing real estate is of the market value of not less than $2,026,747.88.

Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.

None.

59 Item 8—*a*. Total length of its lines or routes over which it transports merchandise, freight or express matter, including 4515 miles over which National Express Company so transports merely as agent of and for account of this company, 164,556.60 miles.

b. Total length of such lines or routes as are outside of the State of Indiana, including 4100.30 miles over which National Express Company so transports merely as agent of and for account of this company, 162,194.53 miles.

c. Total length of its lines or routes within each of the counties and townships in the State of Indiana, viz:

Counties.	Miles. Hdths.	Counties.	Miles. Hdths.
Allen	17.20	Hancock	31.63
Bartholomew	15.30	Hendricks	56.95
Benton	40.87	Henry	29.88
Boone	38.76	Jasper	41.99
Carroll	24.75	Jennings	8.81
Clarke	12.79	Johnson	19.97
Clay	15.92	Knox	6.85
Clinton	28.65	Kosciusko	28.38
Dearborn	25.82	Lake	65.45
Delaware	20.54	Laporte	81.35
Decatur	54.74	Lawrence	41.05
Elkhart	26.64	Madison	52.02
Fayette	14.16	Marion	87.38
Floyd	9.02	Monroe	29.22
Fountain	41.42	Montgomery	49.83
Franklin	31.32	Morgan	12.55
Grant	19.94	Newton	50.30
Greene	25.40	Orange	27.29
Hamilton	16.94	Owen	11.19
60 Parke	52.19	St. Joseph	10.24
Porter	20.26	Tippecanoe	44.72
Posey	24.83	Vanderburg	12.89
Pulaski	17.95	Vermilion	45.97
Putnam	68.93	Vigo	31.84
Randolph	45.51	Wabash	31.37
Ripley	9.76	Warren	26.35
Rush	25.55	Washington	27.66
Shelby	28.48	White	42.01
Starke	5.73	Wayne	45.12
			1799.34

And the following lines or routes over which National Expres Company so transports merely as agent of and for account of thi company—

Adams	16.76	Marshall	22.53
Allen	28.21	Montgomery	15.90
Clinton	23.26	Park	.38
Elkhart	5.34	Porter	32.25
Fountain	25.12	St. Joseph	30.72
Grant	25.69	Starke	15.04
Huntington	8.10	Tippecanoe	6.65
Howard	26.74	Vermilion	6.85
Kosciusko	20.30	Wells	15.75
Lake	34.56	Whitley	18.38
Laporte	36.17		
Total			2213.64

STATE OF OHIO, } ss:
County of Cuyahoga, }

R. D. Hughes, general superintendent of the American Expres Company, being duly sworn on oath says that the foregoing state ments and schedules contain and are a full, true, correct statemen of the matters and things which are required to be returned to th auditor of State, under the provisions of the act of March 6, 1893.

R. D. HUGHES, *Gen. Supt.*

Subscribed and sworn to before me, this 31st day of May, 1899.

HENRY H. INKLEY,
Notary Public.

61 Item 9. This company is the owner of a large amount o tangible property which constitutes no part of its plant for th transaction of the express business, and is not used in said business and all of which has an actual situs without the State of Indiana Said property so owned by it consists of both real and personal prop erty. The real estate is situated in New York, Massachusetts an other States, and the personal property is, and for many years ha been, actually situated in the city of New York, where the company has its principal office and where the said personal property is sub ject to local taxation.

Item sixth of the foregoing report contains a description of th real estate situate outside of the State of Indiana which was owne by the company on the first day of April *1st*, 1899, and which is not and during the year then ending was not, used in the conduct of, o in connection with, the express business, but which was applied by the company to uses having no relation whatever to the expres

business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April 1, 1899, was not less than $2,026,747.88.

On the first day of April, 1899, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept, by the company, so long as it had owned the same, in the city of New York where its principal office is situated. No part of said investments was used by the company on the first day of April, 1899, or during the year then ending, in its express business, and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said invest-
62 ments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral, which were on the first day of April, 1899, of the market value of not less than $16,600,120.95.

All of said stocks, bonds, mortgages and other personal securities or evidences of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by an authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first of April, 1899, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts and other States, and was, on that day, of the market value of not less than $3,094,545.26.

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1899, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c., of the value of $1,534,591.20. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which the same was situated. That of said amount of $1,534,591.21 about $8,000 in value was sit-
63 uated in the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1899, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value about equalling the actual value of the entire aggregate interests of the associates who are its members, and it claims that the State board of

tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said company and situated outside of said State.

This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of The Adams Express Company against The Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of The Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of The American Express Company against Indiana (165 U. S. 255).

64 That the statements of said report were and are true in substance and in fact.

That pursuant to the provisions of the statutes of Indiana in that behalf the State board of tax commissioners of the State of Indiana convened in regular annual session on the 10th day of July, 1899, and continued in session until this — day of August, 1899, and must adjourn on or before the 31st day of August, 1899; and that upon the convening of said board the said report of said American Express Company and said board while so in session, assuming and pretending to be so authorized to do by the statutes of the State of Indiana and especially of the statute of said State of March 6th, 1893, the title of which is hereinbefore set out, assumed to make and gave out to your orator and said American Express Company and to the general public that it, said board had made, a preliminary valuation and assessment for the year 1899 of the property of said American Express Company in the State of Indiana, other than the tangible physical property which is valued and assessed for purposes of taxation by the township assessors and other local taxing officers of said State of Indiana pursuant to the provisions of the statute of said State, approved March 6th, 1891, and entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency;" that said preliminary assessment was $450.00 per mile of the 1,798.34 miles of lines or routes of said American Express Company in the State of Indiana.

That before making said preliminary assessment said board had heard and received no testimony or evidence touching the value of said property of said American Express Company so as aforesaid assumed to be assessed by said board except that furnished by and contained in the said report of said American Express Company except as hereinafter stated.

65 That on the 25th day of July, 1899, the said American Express Company by its counsel, appeared before said board of tax commissioners then sitting in open session to hear the matter and presented and read to said board the three certain affidavits of

James C. Fargo and Charles G. Clark filed in this suit, and filed one on September 22d 1898, and the others on September 26", 1898, reference thereto being here now had.

That the said American Express Company by its counsel then and there stated that the situation shown by said affidavits was on April 1st, 1899, substantially the same except that some of the securities mentioned in said statement were then of somewhat greater market and actual value, which statement said counsel then offered to make under oath upon information and belief but that said board did not require or ask that the statement be thus or in any way verified; that said board then and there asked of said counsel whether the American Express Company's ocean mileage and mileage foreign to the United States was included in the total mileage of 163,000 miles shown by its report and whether that business was done by that express company's own messengers and agents and said counsel informed the board that such mileage was included and that as they were informed and believed since some time in 1897 said ocean and foreign business was done in substantially the same manner and by the same kind of agents and messengers as the company's business in the United States was and is done.

That the said board then requested that the said company's western assistant general manager, Mr. L. W. Fargo, of Chicago, appear before the board on or before Saturday, July 29, 1899, saying that on or before that date, as required by law, the board would make its preliminary assessment of the property of said company.

That at said hearing of July 25, 1899, no evidence or other
66 showing of fact respecting the said American Express Company, its business, property or capital stock, was heard, submitted to or had by said board except that the attorney general of the State of Indiana, Mr. W. L. Taylor, read to the board at said hearing the affidavit of Americus C. Daily, formerly auditor of state of the State of Indiana, made wholly upon information and belief and sworn to on August —, 1898, and filed in this cause —— in this court on the — day of August, 1898, to which affidavit reference is now here had.

That on the 27th day of July, 1899, said L. W. Fargo in behalf of said American Express Company appeared before said board in compliance with its said request and in answer to questions propounded by said board touching the said ocean and foreign business and mileage of said American Express Company and under oath testified in substance:

That said business since some time in 1897, when the arrangements of the company to change it were completed, had been conducted substantially in the same manner as the business of the company then was and still is conducted over its land routes in the United States, viz: through agents at offices, and messengers on the cars and other means of transportation of the railroads and other carriers and by horses, wagons and drivers: that no other company domiciled in the United States then conducted or has since conducted its ocean and foreign business in that way.

That all of his testimony was given in answer to questions propounded by said board and that the foregoing was all of the evidence, testimony or showing of fact then presented to or heard by said board.

That the said report, filed by the American Express Company, and the said affidavits of James F. Fargo, Charles G. Clark and James C. Fargo and said counsel's statement in connection
67 therewith herein above alleged and said affidavit of Americus C. Daily, and the said verbal statement of said L. W. Fargo constituted all the evidence before said board bearing upon the matter of the assessment to be made by said board against said company and upon that evidence and none other said board on the 29th day of July, 1899, by its preliminary assessment valued the property of said company in Indiana, exclusive of its tangible personal property actually located in that State on April 1, 1899, at $450.00 per mile for each of the 1,798 34/100 miles of its routes in the State of Indiana although said board knew on and before said 25th day of July, 1899, that this court in this cause No. 9620 had in 1898 restrained the certification by the auditor of state of the State of Indiana of taxes against said company on the same property assessed by said board in 1898, in the same total per mile and assessed upon substantially the same showing of fact, and that said restraining order was then still in force; that in arriving at said value the board pursued the same process or method of computation pursued by it in 1898 and shown in the original bill of complaint herein.

That thereafter on the — day of August, 1899, said American Express Company filed with said board its protest against said preliminary assessment which was in writing as follows:

68 To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1899, of the property of this company in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450 per mile of the 1798 $\frac{34}{100}$ miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

1. Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto:

2. Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 of the constitution of the State of Indiana and of section 23 of article 1 of the constitution of the State of Indiana:

3. Because the method of procedure adopted by your honorable

body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and is in derogation of the rights privileges and immunities of the company and of the several holders of its capital interests or shares as guaranteed to it
69 and them respectively by the Constitution of the United States and the constitution of the State of Indiana:

4. Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation:

5. Because since the first day of January 1899 continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1899 duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body:

6. Because the valuation and assessment as made by the local taxing officers in 1899, in the State of Indiana of this company's property in that State, from which no appeal has been taken, is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana.

7. Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1899, pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1, 1899, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable
70 board under the statutes of Indiana:

8. Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 163,000 miles (of these about 35,000 miles are in this country and the remainder is made up of water routes, railroad and other routes and lines outside of this country), that by its said report this company is shown to have had on April 1, 1899, a capital of the face value of $18,000,000, then worth on the market 140 cents on the dollar or $25,200,000, and no more; that by its said report this company is shown to have had on said April 1, 1899, real estate without the State of Indiana not used in its express business which was valued for taxation at $969,800.00, and to have had on said last

named date in the State of New York and subject to the jurisdiction of the State of New York for taxation purposes personal property consisting of bonds, stocks, mortgage notes and other like securities of the market value of $16,600,120.95, and that it then had in Indiana 1798.34 miles of lines or routes and that this company's property in the State of Indiana valued and assessed by the local taxing officers in 1899, was assessed for taxation purposes at $16,334.; and this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1899, other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be

71 *a.* In excess of $125. per mile even if its said personal property of the value of $16,600,120.95, outside of Indiana and not used in its express business be included in arriving at said value; and

b. If the value of said personal property outside of Indiana and not used in this company's express business be, as it should be excluded, could not be in excess of $30.00 per mile; and

c. If the mileage other than water and foreign routes be taken as the total mileage and said $16,600,120.95, of value of personal property, outside of Indiana and not used in this company's express business be excluded, as it should be excluded, could not be in excess of $148. per mile.

Wherefore the American Express Company respectfully asks your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1899, of $450. per mile upon said 1798.34 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $30.00 per mile for said 1798.34 miles of its lines or routes in the State of Indiana; and that this protest be received, filed and considered by your honorable body.

Respectfully submitted,

THE AMERICAN EXPRESS COMPANY,
By BAKER & DANIELS, *Its Att'ys.*

Indianapolis, Indiana.

72 Your orator further avers that neither said auditor of State nor said board nor any other officer of the State of Indiana ever made any objection to said report or to any item, statement or part thereof so filed by said American Express Company, but that said auditor received and accepted the same as filed and laid before said board as above stated; that neither said auditor or said board nor any other officer of the State of Indiana ever requested your

orator or his said company to furnish him or it any other or further information respecting said company's property and routes.

That all of the matters and facts stated and set forth in said written protest above copied and set out are true in substance and in fact and your orator now here alleges their truth as allegations or charges herein and asks that they be so considered by the court with the same effect as though now here repeated as independent allegations of fact herein.

Your orator further alleges that the amount of the State, county and other taxes which will be certified by said auditor of State to the auditors of the several counties of the State of Indiana, in which said company has lines and routes if said assessment shall be made final and shall stand, payable by said company, for the year 1899, will be over $14,000.00, all of which is in controversy and dispute in this suit; that the said State board of tax commissioners, as your orator has good reason to believe and does believe, will make its said preliminary assessment and valuation against said company final and will before it adjourns, viz: before August 31st, 1899, certify said final assessment to said auditor of State; that said auditor will forthwith, as your orator has good reason to believe and does believe, if he is not restrained from so doing, apportion said valuation and assessment to the county auditors for distribution among the several counties, townships and towns,
73 under the provisions of said act of March 6, 1893, and forthwith certify such apportionment to the several county auditors of said counties unless he shall be restrained by the order of this court. That an emergency exists for the granting of a restraining order against the certification by said auditor of State of said valuation and assessment to the said county auditors.

Your orator further alleges that the certification of said assessment by said defendant to the several county auditors will work an irreparable and lasting injury to said American Express Company and to your orator as president and shareholder therein and to each and all of the holders of shares or interests in its capital for whose benefit your orator as herein stated as well as for his own and said company's benefit, brings this his supplemental bill as he brought the original bill of complaint.

That the said act of certifying said assessment and apportionment by the defendant as said State auditor to the said several county auditors so about to be done by said defendant would be and is without authority of law and in violation of law in this to wit:

1. That said pretended statute of March 6, 1893, the title of which is hereinabove quoted, is invalid and void because in respect of express companies and especially of the said American Express Company, it amends a statute, namely, said act of March 6, 1891, the title of which is hereinabove quoted, which amended act was itself unconstitutional and void in that it violated section 8 of article 1 of the Constitution of the United States by attempting to regulate interstate commerce as conducted by the class of common carriers designated in said amended act as express companies.

2. That said pretended statute of March 6, 1893, under which said preliminary assessment, which is about to be made final,
74 apportioned and certified to the county auditors as aforesaid was made, is in violation of article 1, sections 21 and 23 of the constitution of Indiana and section 1 of the 14th amendment to the Constitution of the United States in that by said pretended statute the respective shareholders of said The American Express Company, your orator and said company, are deprived of their property without due process of law.

3. That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the property of said The American Express Company in the year 1899 other than its tangible property, deprives the said American Express Company and each of its shareholders and especially your orator, of its and their property without due process of law and in violation of the provisions of the Constitution of the United States and of the constitution of the State of Indiana in that behalf in that it assesses for taxation purposes in Indiana personal property of said American Express Company owned and held by it in the city of New York and State of New York, consisting of bonds, stocks, mortgage notes and other like securities, no part of which property is now or ever has been used by said company in connection with its express business in Indiana or elsewhere, and no part of which is or has ever been a part of or connected with the plan of said company as an express company.

4. That said pretended statute of March 6, 1893, is in violation of section 1 of the 14th amendment to the Constitution of the United States in that by said statute the said American Express Company and each of its shareholders and especially your orator, are respectively denied the equal protection of the laws.

5. That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the
75 property of said American Express Company in the year 1899, other than its tangible property in Indiana, denies to the said company and to each of its shareholders and especially to your orator the equal protection of the laws;

6. That by the method of procedure adopted and followed by said board in assessing in 1899, said express company's property, and especially by its construing said act of 1893, to require that only the railroad mileage in the United States of the lines or routes operated by said company should be considered by said board as constituting the total mileage mentioned in said act, and thereby excluding all of the water routes and foreign routes operated by said company, the said company, its several shareholders and especially your orator are deprived of their property without due process of law and are denied the equal protection of the law in violation of the provisions of the Constitution of the United States guaranteeing said respective rights.

7. That said pretended statute of March 6, 1893, and said pretended preliminary assessment and valuation of the property of

said American Express Company of said State board in 1899, if the same shall be made final and shall stand, are in contravention of section 1 of the 14th amendment to the Constitution of the United States and of section 8 of article 1 and of section 10 of article 1 of the Constitution of the United States respectively.

8. That by the method of procedure adopted by said State board in assessing in 1899 the property of said American Express Company in the State of Indiana, exclusive of its property by law required to be assessed by local taxing officers, said board has in making the said assessment against said American Express Company valued and assessed for taxation in said State of Indiana personal property of said company owned and held by said
76 company and physically situate in the city of New York in the State of New York and not used by it in connection with its express business and forming no part of its express business plant and thereby when said assessment shall be made final the said company, its several shareholders and especially your orator, will be deprived of their property without due process of law and will be denied the equal protection of the laws in contravention of the provisions of the Constitution of the United States guaranteeing said rights respectively.

Your orator further charges that the aggregate of the State, county and township taxes for 1899 in the county in this State where the aggregate levy is the smallest is in excess of 150 cents upon each $100.00 of assessed valuation and such aggregate in the county in this State where said aggregate is the highest is more than 300 cents upon each $100.00 of assessed valuation.

That said express company has paid all taxes levied and assessed upon and against its tangible property by the local taxing officers in the several counties where its lines are for the year 1899, so far as the same are due and is ready and willing to pay as the same shall mature all such taxes so *as* assessed for the year 1899, and said American Express Company is ready and willing to, and your orator for it and in his own behalf now offers so to do to bring into this court for payment by the court's direction unto the proper State and county officers — and all taxes of whatsoever kind that have been levied or are *liable* against said company in Indiana, except taxes levied and assessed against said company in the State of Indiana by the State board of tax commissioners in the years 1898 and 1899; and your orator for said express company and in his own behalf is ready and willing to pay and now offers to secure the payment of all or such part of said last mentioned taxes, to
77 the approval of this court, that the court may upon final hearing of this cause find should be paid by said express company.

Your orator further alleges that said American Express Company is, and for many years last past has been, the owner of real estate situate in Marion county and State of Indiana, being the real estate mentioned in its said report filed in 1899, in the office of the auditor of state of the State of Indiana; that the said pretended as-

sessment so made in 1899, and about to be made final, by the said State board, will cast a cloud upon its title to said real estate; that said express company has, and for many years last past has had, express lines or routes in and through said Marion —, and 57 other counties in Indiana and that actions or suits in each of said several counties to enforce the collection of said pretended taxes so as aforesaid about to be certified to the auditors of said counties against said American Express Company or actions to restrain and enjoin the enforcement and collection of said alleged and pretended taxes would necessarily involve large expense and outlay of time and money to the State of Indiana and to the cities and towns in which said express lines and routes are and to said American Express Company and its shareholders by reason of the multiplicity of suits and that such multiplicity of suits is avoided by this suit.

In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, to the end therefore that the defendant against whom process is hereinafter prayed, if he can, show why your orator should not have the relief hereby prayed, and that he the said defendant, may but not under oath, oath being hereby waived, to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and
78 perfect answer make, to all and singular the matters and things hereinbefore set forth and alleged, as fully and completely as if the same were here repeated, and he, the said defendant, thereunto severally and specifically interrogated paragraph by paragraph, and that a temporary injunction may forthwith issue herein, without notice, against the defendant William H. Hart, as auditor of state of the State of Indiana enjoining and restraining him from certifying to each or any or all of the auditors of the respective counties in Indiana where said American Express Company has express lines or routes, valuations, assessments and taxes made and levied by said State board against said American Express Company in the year 1899 or any part of such valuations, assessments and taxes until a hearing can be had herein and that upon the final hearing of this cause this defendant be perpetually enjoined from certifying valuations, assessments and taxes made, levied and assessed by said State board against said American Express Company in and for the year 1899, and that the cloud cast upon the property of said American Express Company in Indiana by reason of said pretended assessment of said State board in 1899 and the lien thereby attempted to be created upon its property, real and personal, in Indiana, be removed; that said taxes, valuations and assessments be respectively declared invalid and void, and that there be granted unto your orator all other proper relief in the premises.

And may it please your honors to grant unto your orator the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, William H. Hart, as auditor of state of the State of Indiana, commanding him at the proper time, and under the proper penalty,

both to be named therein, to be and appear in this honorable court, then and there to answer, all and singular the matters and
79 things hereinbefore stated and charged, and stand to perform and abide such further order, direction and decree as may be made against him.

And your orator, as in duty bound, will ever pray, etc.

JAMES C. FARGO,
As President of the American Express Company,
By BAKER & DANIELS,
His Solicitors.

BAKER & DANIELS,
CARTER & LEDYARD,
Sol's for Compl'nt.

UNITED STATES OF AMERICA, }
District of Indiana, } ss:

Albert Baker being duly sworn, on his oath says he is one of the solicitors of the complainant in the foregoing bill of complaint; that he is authorized to and does sign this affidavit in behalf of the complainant in said cause; that he has read the foregoing bill of complaint and knows its contents and that the matters and facts therein stated are true as he is informed and verily believes.

ALBERT BAKER.

Subscribed and sworn to this 22 day of August, 1899.

NOBLE C. BUTLER,
Clerk U. S. Circuit Court, District of Indiana.

And now the defendant William H. Hart by his said solicitor enters his appearance herein to said supplemental bill or bill in the nature of a supplemental bill.

80 And afterwards towit, at the November term of said court, on the 19th day of January, 1900, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Comes now the defendant by W. L. Taylor, Esq., his solicitor, and files his demurrer to the bill and supplemental bill herein, in the words following, towit:

The demurrer of the defendant, William H. Hart, as auditor of state of the State of Indiana, to the bill of complaint and the supplemental bill of complaint herein.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in said bill or supplemental bill of complaint contained to be true, in such manner and form as the same are therein set forth and alleged, demurs to the said bill and supplemental bill, and for causes of demurrer says:

1. That enough does not appear upon the face of the bill or supplemental bill to show the court's jurisdiction of the suit, in conse-

quence of the want of proper and necessary averment of citizenship of the parties.

II. That a compliance has not been made in said bill or supplemental bill with the requisites of rule 20 of the equity rules of this court, in this: that it is not stated that one of the partners of said plaintiff is not, and at the time of the bringing of said bill and supplemental bill, was not, a resident of the State of Indiana.

III. That neither said bill nor said supplemental bill alleges that at the time of the filing of said original and supplemental bills, all of said co-partners owning interests in said American Express Company, were non-residents of the State of Indiana.

IV. That said plaintiff has not, by said bill or supplemental
81 bill made or stated such a case as does, or ought to, entitle him, or any of his co-partners, to any relief as is sought or prayed in said bill or supplemental bill, from or against this defendant.

V. Because neither the bill nor the supplemental bill shows on its face that the action is one arising under the Constitution or laws of the United States.

VI. That said bill of complaint and supplemental bill of complaint is each wholly without equity.

Wherefore, this defendant demands the judgment of this honorable court whether he shall be compelled to make any further answer to the said bill or supplemental bill, or to any of the matters and things therein contained, and prays to be hence dismissed with his reasonable costs in this behalf sustained.

W. L. TAYLOR,
Attorney General of Indiana,
MERRILL MOORES,
C. C. HADLEY,
Solicitors for the Defendant.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

W. L. TAYLOR,
Attorney General of Indiana, of Counsel for Defendant.

STATE OF INDIANA, }
Marion County. }

William H. Hart, being duly sworn, on oath says: That he is the auditor of state of the State of Indiana, the above named defendant, and that the foregoing demurrer is not introduced for delay.

WILLIAM H. HART,
Auditor of State — Indiana.

Subscribed and sworn to before me, a notary public in and
82 for said county and State, this 19 day of January, 1900.

Witness my hand and notarial seal the day and year last above written.

FROST KING,
Notary Public of Marion Co., State of Ind.

My commission expires Sept. 2, 1902.

And afterwards towit, at the May term of said court, on the 3d day of July, 1900, before Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Come now the parties by their respective solicitors, and thereupon the court having heard the argument of counsel and being sufficiently advised in the premises, doth now overrule the demurrer to the bill of complaint herein.

And afterwards towit, at the May term of said court, on the 24th day of July, 1900, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Comes now the defendant by W. L. Taylor, Merrill Moores and C. C. Hadley, his solicitors, and files his answer herein, in the words following, towit:

Answer of William H. Hart, as auditor of state of the State of Indiana (successor to Americus C. Daily, auditor of state of the State of Indiana), to the bill and supplemental bill of complaint of James C. Fargo, as president of the American Express Company.

Comes now William H. Hart, as auditor of state of the State of Indiana, successor to Americus C. Daily, auditor of state of the State of Indiana, and for answer to the bill and supplemental bill of complaint herein, says:

He admits that James C. Fargo is president of the American Express Company and a resident citizen of the State of New
83 York, and that said Americus C. Daily, as auditor of State, and this defendant were and are residents and citizens of the State of Indiana during all the times mentioned in the bill and supplemental bill.

He admits that said Fargo was and is a shareholder of the American Express Company, but says that said express company was during all the times mentioned in the said bill and supplemental bill and now is and always has been a partnership.

This defendant admits that the principal place of business of said partnership company is located at New York city, State of New York, and that its meetings are held and its books are kept in the city of New York and State of New York; but it is not informed as to where its bonds, stocks and mortgages, and securities generally, are kept, held or owned.

He admits that said company is composed of many members or co-partners, who own 180,000 equal shares or interests in said express company, such shares or interests represented by certificates having a market value of not less than $100 per share.

Defendant says that said members are partners, and some of them were at the time of the filing of said bill, and ever since then have been, and now are, residents and citizens of the State of Indiana.

This defendant admits that said partners are widely scattered and

live in fifteen or more States of the United States, as stated in the bill, and that some of them are beyond seas; but he denies that said president, or any member or partner of said company, has any right in his own behalf, or on behalf of said company, to represent the other partners of said company, or to bring this suit and file said bill or supplemental bill of complaint herein, for or on behalf of any other of said partners than himself, and particularly the partners who are citizens and residents of the State of Indiana.

84 This defendant admits that said express company is and for many years last past has been conducting the express business on railways, steamboats, &c., and that it has been so conducting such business in the State of Indiana in transporting money, bonds, securities, &c., through and into the State from and to other States of the United States, and is so conducting said business now; that it neither owns nor operates railroads or steamboats, but does business on railroads substantially as stated in the bill.

Defendant admits the passage by the General Assembly of the State of Indiana of the act referred to in the bill, as stated, as well as the filing of the report by said express company, as copied in the bill and supplemental —.

Defendant admits the making of the assessment by the State board of tax commissioners of Indiana in 1898 and 1899, substantially as stated in the said bill and supplemental bill of complaint.

Defendant admits the filing of the protests copied in the said bill and supplemental bill of complaint, as averred.

This defendant is not informed whether any objection was made to the said reports of the said complainant, or to any request by any officer of the State of Indiana for further information, even if the same were at all material to any issue in this case, as stated in the bill or supplemental bill, which defendant denies.

This defendant is informed and believes, and therefore charges the fact to be, that the Adams Express Company and the United States Express Company are engaged in a similar business, and for a number of years have accepted consignments of freight and express matter to substantially the same domestic and foreign countries as the American Express Company does and has done; that the Adams

85 Express Company has returned to this defendant as auditor of State of Indiana, for the year 1896, as its total length of lines in miles, 27,300; for the year 1897, 29,940; for the year 1898, 29,940; for the year 1899, 29,845; and for the year 1900, 29,468; that the American Express Company has returned, as its total length of lines in miles, for the year 1896, 34,220; for the year 1897, 34,957; for the year 1898, 163,063; for the year 1899, 163,021; and for the year 1900, 162,619 miles; that the United States Express Company has returned as its total length of lines in miles for the year 1896, 29,813.17; for the year 1897, 27,786.83; for the year 1898, 151,580; for the year 1899, 151,516.59; and for the year 1900, 151,590.59 miles.

Defendant says that during the five years named the said three companies named have transacted precisely a similar business, do-

ing business in each of said years in precisely the same way and shipping freight and express matter to foreign points throughout the world, to substantially the same places and in the same manner as at present, and that the total mileage of the three companies named and their facilities for doing business at home and abroad has not been materially altered during the years above named.

Defendant is informed and believes and so states the fact to be that it is the custom of all three of the said companies to consign expressage to foreign countries on freight on fast steamers, such expressage being delivered by such steamers at London, Berlin, Paris and possibly a few other large cities in foreign countries, to agents of the express companies which contract for the shipment; but that in England all such express matter not delivered directly to the London agent of the express companies is delivered by other carriers who are engaged in the transfer and express business in Great Britain and Ireland, and is forwarded to its destination by
86 such other carriers under contract with the original express company making the shipment.

In the German Empire similar arrangements are made with the local carriers, who forward the same through the German Empire; and in France and other European and foreign countries similar arrangements are made with other local carriers engaged in the fast freight or express business for forwarding freight and express matter; that said forwarding express companies are paid therefor by said American Express Company for such forwarding. That outside of a few large cities no one of said three American express companies named has any employees directly in its pay, engaged in the express business, nor does it through its own servants or employés forward or deliver freight or express matter. That nowhere outside of the United States does the complainant maintain any express lines or routes, but instead of maintaining and operating such lines and routes the complainant forwards its freight and expressage outside of the United States wholly by and through other express carriers engaged in a similar business, who accept and forward and deliver freight and expressage matter from complainant, for hire.

Defendant is further informed and believes that complainant does not pay any taxes upon this foreign mileage throughout the world, and that the enormous increase in mileage for 1898 and 1899, as shown in said bill and supplemental bill, and reported to said State board of tax commissioners of the State of Indiana, was made and stated for the purpose of avoiding the payment of taxes justly due to the State of Indiana, and to the other States of the Union, and that no part of said increased mileage will be taxed in any country of the world, or in any other of the States of the United States, and that there has been no such increase in mileage as stated in the said bill and supplemental bill, and that the same is made
87 for the purpose of avoiding the payment of taxes justly due, not only to the State of Indiana, but to other States of the United States of America.

Defendant further says that he is not informed whether complainant and his associates possess real estate in New York, Illinois, Massachusetts and other States, as stated in the bill, amounting to $3,000,000, or that they own and possess stocks and bonds and moneys of the value of over $15,000,000, as stated in the bill and supplemental bill of complaint, or of the value of the personal property, such as horses, wagons, harness, &c., throughout the United States.

But this defendant says that all of said real estate was reported to the State board of tax commissioners of Indiana, of which defendant is a member, and was considered in assessing the value of the American Express Company's taxable property in the State of Indiana, for the years stated in the bill and supplemental bill of complaint.

Defendant further says that he is informed and believes that if the American Express Company possessed stocks and bonds of corporations and companies, bills receivable, mortgage bonds and moneys loaned on collateral, as stated in the bill and supplemental bill, the same was held, employed and used by said complainant for the purpose of transacting its express business, and that such personal property and securities were necessarily and properly used and employed in maintaining and continuing said business.

That said express company transmits daily in the regular course of its business millions of dollars in money, for the loss of all, or any part of which, its members and partners are individually liable; that it has contracts with railroad companies and other car-
88 riers calling for payments from day to day of large amounts of money; that it does a very large business in shipping bonded freight and express matter under bond to the United States Government from seaports to ports of entry in the interior of the United States, and to foreign points; for all of which freight and express matter, and the proper delivery and accounting for the same at the custom houses in interior parts of the United States and other parts of North America, the American Express Company is required by the United States Government and by railroad companies with whom it has contracts, to give bonds; such bonds being for very large amounts, and requiring to be constantly given and renewed.

That by reason of the individual liability of the copartners, transacting business as the American Express Company, it will be impossible to transact the business of such company, or any extensive express business in the United States, or elsewhere, unless such copartnership have and maintain constantly either ready money in large amounts, or securities readily convertible into cash; such holdings with the ability to pay losses and give bonds and meet cash payments to such carriers.

That said fifteen and a half million dollars in securities is held and used by the American Express Company as a part of the necessary capital of its business, and is employed in the management of said business, and is essential to its profitable continuance.

That so much of said capital as is invested in securities of the

kind named in said bill and supplemental bill is used and employed not only in and for the city and State of New York, but generally in the management and conduct of the business of said co-partnership, and that such securities form a part of its capital and business, and are in constant use wherever said company does business, both in the State of Indiana and elsewhere
89 throughout the United States.

Defendant says that for the year 1898 the American Express Company returned to the comptroller of the State of New York, as the capital employed in New York State, $2,916,000, of which $1,405,985, was invested in real estate.

Defendant further states that the American Express Company returned to the comptroller of the State of New York, for the year 1898, the sum of $1,748,700.61, as its gross earnings in the State of New York, upon which sum the company was liable to the State for a tax upon gross earnings; and defendant states that the American Express Company made no return to the State of New York, or to the county of New York, or to the city of New York, in which said company maintains its headquarters and home offices, for the year 1898, of any personal property of any description, and that the name of the American Express Company or of the plaintiff, as president of the American Express Company, does not appear upon the tax duplicates of the county or city of New York for the year 1898, as assessed for taxation upon any personal property of any description whatever.

Defendant states that no returns of personal property of any description have been made to the State, county or city of New York for the year 1899, and that neither the name of the American Express Company nor that of James C. Fargo, as president of said company, or as an individual, appears upon the tax duplicates of the county or city of New York for the year 1899 as assessed for any personal property of any description whatever, and that no taxes whatever were assessed or paid in the city or State of New York upon the specific personal property described in the bill or supplemental bill of complaint, and that the refusal of said express company to pay the proportion of taxes due on its property, real
90 and personal, as set forth in the said bill and supplemental bill, is an attempt to evade the payment of taxes justly due the State of Indiana, and accruing upon said property, both real and personal.

Defendant denies that the act of March 6, 1891, as amended, or any of the acts supplemental thereto, as stated in the bill and supplemental bill, are invalid and void, but says that the same are valid and binding.

Defendant denies that the act of March 6, 1893, as stated in the bill and supplemental bill of complaint, is in violation of article 1, sections 21 and 23 of the Constitution of the United States, or of section 1 of the fourteenth amendment to the Constitution of the United States, or any other sections of either the constitution of the State of

Indiana, or of the Constitution of the United States; but says that the same *are* constitutional and valid in every particular.

Said defendant denies that said assessments for 1898 and 1899 or either of said assessments, as stated in the bill and supplemental bill, deprives the American Express Company, or any of its shareholders of any of its property without due process of law, in violation of any provision of the Constitution of the United States or of the constitution of the State of Indiana, or that it assesses for taxation purposes in Indiana personal property of said American Express Company owned or held by it in the city of New York and State of New York, which was not used by said company in connection with its express business in Indiana, or elsewhere, as stated in said bill and supplemental bill of complaint.

Defendant denies that the statute of March 6, 1893, as stated in said bill and supplemental bill, is in violation of section 1 of the fourteenth amendment to the Constitution of the United States, or that it denies said express company, or any of the co-partners owning the same, the equal protection of the laws.

91 Said defendant further denies that the mode of procedure adopted by the State board of tax commissioners, under the act of March 6, 1893, in assessing the property of the American Express Company, for the year- 1898 and 1899, as stated in said bill and supplemental bill of complaint, denies to said company, or to any of its co-partnership members, the equal protection of the laws.

Defendant further denies that the method of procedure adopted and followed by the State board of tax commissioners of Indiana in assessing for the year 1898 or 1899, the property of the said American Express Company, in excluding all foreign routes, is depriving the said company, or any of its co-partnership members, of their property without due process of law, or denying to them the equal protection of the laws, or that the same is in violation of any provision of the Constitution of the United States or of the State of Indiana.

Defendant denies that the so-called preliminary assessment, referred to in the bill and supplemental bill, or the method of procedure of the assessment of property against said express company, for the years 1898 and 1899, as stated in said bill and supplemental bill, was in contravention of any section of the Constitution of the United States, or of the State of Indiana.

This defendant is not informed of the aggregate levy of the State, county and township taxes for 1898 or 1899, in all parts of the State of Indiana, or whether said express company has paid all the taxes levied and assessed against its tangible property by the local taxing officers in the several counties where its lines were running during those years, or of its willingness to bring into the court the amount that the court may direct to be paid or levied against said company in Indiana; but this defendant denies to this court any juris-

92 diction whatever to hear or to determine any question whatever respecting the amount of the assessment that should be made against the property of the American Express Company for

the year 1898 or the year 1899, under the facts stated either in the bill or the supplemental bill of complaint herein. That if any question whatever is presented it is one of excessive assessment and not that the whole tax is illegal and void.

That this court has no jurisdiction whatever, nor can it rightfully assume any jurisdiction over the defendant or the State board of tax commissioners, or prevent said board from assessing the property of said express company in the State of Indiana, under the facts stated in either the said bill or supplemental bill of complaint; nor has this court any jurisdiction whatever to acceot the offer of the express company to secure the payment of any or all of the taxes which either the said express company or this court may determine should be due to the State of Indiana and the several counties of the State of Indiana from said express company for taxes upon its property used and occupied within the State of Indiana.

This court has no jurisdiction whatever to hear or determine the proportion of the assessment against said express company, as fixed and made by the State board of tax commissioners of the State of Indiana, of which this defendant is a member, that it be determined and assessed pursuant to a decree of this court; nor has it any jurisdiction whatever to hear or determine the proportion of such assessment so made or to be made by said State board of tax commissioners of the State of Indiana, that should be enjoined and ordered cancelled pursuant to the decree of this court.

This defendant further says that said express company has not paid to the State of Indiana, or to any county of the State of
93 Indiana, any taxes whatever assessed by the State board of tax commissioners of the State of Indiana, for either the year 1898 or the year 1899; nor has said express company paid any taxes in the State of Indiana for the years 1898 or 1899, except the taxes upon tangible personal property and real estate alleged to have been locally assessed by the local taxing officers of the State of Indiana against said company.

All other things not herein admitted are denied as to the facts stated in said bill and supplemental bill of complaint.

WM. L. TAYLOR,
Attorney General of Indiana.
MERRILL MOORES,
C. C. HADLEY,
Solicitors for Defendant.

STATE OF INDIANA, }
Marion County. }

I hereby certify that in my opinion the foregoing answer is well founded in point of law.

WILLIAM L. TAYLOR,
Of Counsel for Defendant.

And afterwards towit, at the May term of said court, on the 7th day of August, 1900, before Honorable William A. Woods, judge of

said court, the following further proceedings in the above entitled cause were had, towit:

Comes now the complainant by Baker & Daniels, his solicitors, and files his replication herein, in the words following, towit:

The Replication of James C. Fargo, Complainant, to the Answer of William H. Hart, Auditor, &c.

This repliant saving unto himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereunto saith that he will aver and prove his said bill to be true certain and sufficient in the law to be answered
94 unto, and that the said answer of the said defendant is uncertain untrue and insufficient to be replied unto by this repliant; without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided traversed or denied is true; all which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

BAKER & DANIELS,
Solicitors for Complainant.

CARTER & LEDYARD, *Of Counsel.*

And afterwards towit, at the May term of said court, on the 9th day of August, 1900, before Honorable William A. Woods, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Come now the parties complainant and defendant by their respective solicitors and this cause being at issue by agreement of parties the court now hereby appoints Rowland Evans, Esq., special examiner in chancery in this cause to take in writing the evidence in this cause the same to be taken at such times and places as said examiner may determine upon proper notice to be given by the examiner to the witnesses whose depositions are to be taken and *and* to the solicitors of the respective parties; and said examiner is hereby ordered to return all depositions and evidence he shall take duly certified by him as such examiner into this court in this cause but without any finding thereon.

And afterwards towit, at the May term of said court, on the 25th day of August, 1900, in recess of said court, the following further proceedings in the above entitled cause were had, towit:

Come now the parties in each of the above entitled suits,
95 the complainants, respectively by Baker & Daniels, their solicitors, and the defendant in each of said suits by William L. Taylor, attorney general of the State of Indiana, his solicitor, and file a stipulation herein signed by said parties by their respective solicitors as follows:

Whereas in the years 1898 and 1899, the State board of tax commissioners of the State of Indiana, made certain assessments and valuations for taxation purposes against the American Express Company and the National Express Company whereby it valued in each year the lines or routes of those companies in Indiana, in each of said years at $450.00 per mile; and whereas in the year 1898 the above named complainants as president of the said American Express Company and the said National Express Company respectively filed in the circuit court of the United States for the district of Indiana sitting in chancery in causes No. 9620 and 9621 their certain bills in equity against Americus C. Daily, then auditor of state of the State of Indiana alleging that said assessment of 1898 was for divers reasons, in said bills set out, void and seeking to enjoin said auditor of State from certifying said assessments to the various county auditors of the State of Indiana.

And whereas in each of said causes said court granted a preliminary injunction, which is still in force, restraining said auditor from so certifying said assessment; and whereas afterward and while said injunction was in full force said Daily's term of office as such auditor expired and the above named defendant, William H. Hart, as his duly elected and qualified successor in said office became and has ever since remained and now is the auditor of state of the State of Indiana; and whereas after said William H. Hart became such auditor, by proper proceedings in said cause, he was by substitution, made the defendant in each of said causes and said injunction was by
96 proper proceedings in said causes made as effective against him as such auditor as it has been against said Daily while he was auditor, which injunction still stands in full force against said William H. Hart, present auditor of state of the State of Indiana. And whereas the State board of tax commissioners of the State of Indiana has in the year 1900 again made a certain assessment and valuation for taxation purposes for the year 1900 against said American Express Company and said National Express Company whereby it has again valued the lines and routes in Indiana of each of said companies at $450.00; and whereas the said complainants by supplemental bills in said causes caused said order of injunction to be extended in 1899 to that year's assessment which order of injunction is still in force; and whereas the said complainant James C. Fargo as president of said American Express Company and the said complainant Livingston Johnston as president of said National Express Company have prepared and are by their solicitors of record in said cause, Baker & Daniels, about to file in said court in said causes their supplemental bills or bills in the nature of supplemental bills, which have been exhibited to said defendant, William H. Hart, auditor of state of the State of Indiana, and to said William L. Taylor, attorney general of the State of Indiana, his solicitor of record in said cause in which, and upon the same grounds stated in said original bills in said causes said complainants Fargo and Johnston to remove the doubt if any, that the present injunction embraces a prohibition against the certifica-

tion of the said assessment of 1900 to the several county auditors, seek to enjoin the said William H. Hart as auditor of state of the State of Indiana from certifying to the several county auditors of Indiana the assessment and valuation for taxation purposes so made in 1900 by the said State board of tax commissioners and said complainants have expressed the
97 purpose to press a motion for such injunction to an immediate hearing and whereas the said defendant does not object to said application being made by way of supplemental bills in said causes instead of original bills in a new suit between the same parties in the said court, but for convenience of parties agrees with complainant that, owing to the fact that the original and supplemental bills seek to settle but one dispute which now by the said assessment of 1900, relates to the year 1900 as well as the years 1898 and 1899, the whole controversy should be determined in this suit; and whereas it is inconvenient for both parties to now present to the court the application for an injunction contained in said supplemental bill;

Therefore the parties now here stipulate as hereinafter stated and agree that this stipulation shall become a part of the record in said cause:

1. The complainants may and now do file respectively their said supplemental bills with the same effect as though permission to file each of them has been first given by said court.

2. The defendant will not certify the said assessments against each of said express companies made by the State board of tax commissioners in 1900 or any part of it to the auditor of any county in Indiana until the court shall have heard and ruled upon the application for a temporary injunction or restraining order contained in each of said supplemental bills but the defendant will until said application is so ruled upon, treat the present injunction as having been extended by the court to cover the said assessments made by said State board of tax commissioners in the year 1900 against said American Express Company and said National Express Company.

That the parties will both make diligent effort to bring said application to a hearing as soon as the judge before whom the
98 causes are each pending, or other proper judge, can be present in said court and can hear it.

Dated Indianapolis, Indiana, August 25th, 1900.

BAKER & DANIELS,
Solicitors for James C. Fargo, Pres't American Express Company, and Livingston Johnston, Pres't National Express Co.

WILLIAM L. TAYLOR,
Attorney General of Indiana, Solicitor for William H. Hart, Auditor of State of Indiana.

And now the complainants in pursuance of said stipulation file their respective supplemental bills or bills in the nature of supplemental bills herein in the words and figures following, to wit:

99 To the honorable the judges of the circuit court of the *circuit court of the* United States for the district of Indiana:

Your orator, James C. Fargo, as president of the American Express Company and a resident citizen of the State of New York, brings this his bill of complaint against William H. Hart, as auditor of state of the State of Indiana and a resident citizen of said State of Indiana and humbly complaining, showeth, as is shown by his original bill herein, unto your honors by this his second supplemental bill or bill in the nature of a supplemental bill that your orator is the president and a shareholder of the American Express Company which is a joint stock company or association organized under the laws of the State of New York many years ago and continuously from the date of its organization to the present time existing under said laws; that said company has its principal place of business in the city of New York in the State of New York and in said city its meetings are held and its books and general assets are kept and owned; that said company is composed of more than 3,000 members or copartners who own 180,000 equal shares or interests in said company represented by certificates having a nominal value for the purposes of the agreement under which said company was constituted of $100.00 each and which for several years last past have had a market value of not less than $100.00 per share. That all of said members or shareholders have a joint ownership and interest in the cause of action hereinafter stated but they are too numerous to be joined as parties hereto and it is impracticable to bring them all before the court because they are widely scattered and live in different parts of more than 15 States of the United States and that some of them are now temporarily beyond seas and your orator therefore as such president and member or shareholder brings and files this second supplemental bill of complaint or bill
100 in the nature of a supplemental bill not only on his own behalf but on behalf of the said company and each and all of its members;

That said company is and for many years last past has been conducting the business of a common carrier popularly and technically described as the express business, that is to say, the quick and safe transportation and transmission over public routes and highways by means of railways, steam-boats, steamships and other public carriages of moneys, bank-bills, bonds and securities and packages containing articles of greater or less value as contra distinguished from ordinary freight; that for more than 25 years last past said company has been and still is conducting such express business in the State of Indiana and that in the conduct of its said business said The American Express Company has for many years last past carried, transported and transmitted packages of money, bonds, securities, goods, wares and merchandise into the State of Indiana from the States of New York, Pennsylvania, Ohio, Illinois and many other States of the United States and from the State of Indiana into the said other States of the United States and through the

State of Indiana from and to other States of the United States and still continues so to carry, transport and transmit such packages and property; that it neither owns nor operates any railroads or means of carriage of its own but does said business under contracts with railroad companies and other common carriers owning and operating railroads, rolling stock, ships and other public conveyances;

Your orator further showeth that the defendant William H. Hart, is and at the times hereinafter mentioned, was the auditor of state of the State of Indiana.

That on the 6th day of March, 1893, an act of the General Assembly of the State of Indiana entitled "An act supplementary to and amendatory of an act entitled 'An act concerning taxa-
101 tion, repealing all laws in conflict therewith and declaring an emergency,' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, express and fast freight joint stock associations, companies, co-partnerships and corporations, transacting business in the State of Indiana, repealing sections 68, 69, 70 and 71 of said act and all laws in conflict therewith and declaring an emergency;" having been duly approved by the governor, went into effect in the State of Indiana as a statute of said State, and the same has never been repealed or amended by any subsequent legislative enactment; that pursuant to the provisions of said statute and especially of section 3 thereof, said The American Express Company in the year 1900 filed in the office of the auditor of state of the State of Indiana its report for the year 1900, that a copy of said report is as follows:

Express companies.

1900.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests, 180,000 of $100. each	$18,000,000
Item 2. No. of interests issued and outstanding 180,000 interests.	
a. Par or face value of each interest, all interests are equal value	$100.
Item 3. Principal place of business New York, in the State of New York.	
Item 4. Market value of each interest on the 1st day of April, 1900	$140.
a. If shares have no market value then state actual value thereof.	

This company is not a corporation but a partnership or joint
102 stock association organized under articles of agreement between its members. It possesses no rights, privileges or franchises other than such as are enjoyed by any private individual or association of individuals.

Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	Description of real estate, structure, machinery, etc.	Assessed value.
Bartholomew	Personal property	$65.
Clinton	" "	265.
Decatur	" "	150.
Delaware	" "	460.
Elkhart	" "	250.
Floyd	" "	150.
Fayette	" "	90.
Fountain	" "	40.
Grant	" "	370.
Henry	" "	44.
Jasper	" "	30.
Johnson	" "	15.
Knox	" "	150.
Lake	" "	225.
Laporte	" "	265.
Lawrence	" "	120.
Madison	" "	395.
Montgomery	" "	270.
Monroe	" "	175.
Marion	" " and real estate	9,600.
Orange	" "	75.
103 Pulaski	Personal property	30.
Putnam	" "	300.
Randolph	" "	185.
Shelby	" "	135.
St. Joseph	" "	250.
Tippecanoe	" "	525.
Vigo	" "	500.
Vanderburg	" "	350.
Wabash	" "	225.
Washington	" "	20.
		$15,724.

The above personal property consists of horses, wagons, harnesses, safes, &c.

The following property, of the like description, is in use by the National Express Company, and assessed to it for local taxation, but actually belongs to this company—being used by the National Express Company as agent of this company.

Allen	Horses, wagons, office fixtures, scales, safes...	$935.
Elkhart	" " " " " " ...	197
Howard	" " " " " " ...	209.
Wells	" " " " " " ...	191.
		$17,256.

104 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Asse'd value.
5561 Hudson St. building.	New York, N. Y..	Rented.....	$240,000.
157 Hudson St. building.	New York, N. Y..	Rented.....	13,000.
365 Broadway building.	New York, N. Y..	Rented.....	440,000.
Cor. Brown & Elm St. building.	New York, N. Y..	Rented.....	100,000.
Cor. Maine & Erie St. building.	Buffalo, N. Y.....	Unoccupied...	80,000.
Exchange St. building..	Buffalo, N. Y.....	Rented.....	16,800.
Canal & Friend St. building.	Boston, Mass.....	Rented.....	228,000.
Larned St. building	Detroit, Mich	Unoccupied...	10,000.
Marshall St. building...	Paterson, N. J....	Unoccupied...	1,400.

The foregoing real estate is of the market value of $2,026,747.88.

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Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.
None.		

Item 8. *a*. Total length of its lines, over which it transports merchandise, freight or express matter including 4373.88 miles over which National Express Company transports merely as agent of and for account of this company... 162,619.17 miles.

b. Total length of such lines as are outside of the State of Indiana, including 3,959.18 miles over which National Express Company so transports merely agent of and for account of this company..... ..... 160,374.12 miles.

c. Total length of its lines within each of the counties and townships in the State of Indiana, viz:

Counties.	Townships.	Miles. Hdths.
Allen	(See statement herewith.).. ...	17.20
Bartholomew		15.30
Benton		40.87
Boone		38.76
Carroll		24.75
Clark		12.79
Clay		15.92
Clinton		28.65
Dearborn		25.82
Delaware		20.54
Decatur		54.74
Elkhart		26.64
Fayette		14.16
Floyd		9.02
Fountain		41.42
Franklin		31.32
Grant		19.94
Greene		36.57
Hamilton		16.94
Hancock		31.63
Hendricks		56.95
Henry		29.88
Jasper		41.49
Jennings		8.81

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	Johnson	19.97
	Knox	6.85
	Kosciusko	28.38
	Lake	65.45
	Laporte	81.35
	Lawrence	41.05
	Madison	52.02
	Marion	87.38
	Monroe	29.22
	Montgomery	49.83
	Morgan	12.55
	Newton	50.30
	Orange	27.29
	Owen	11.19
	Parke	52.19
	Porter	20.26
	Posey	24.83
	Pulaski	17.95
	Putnam	68.93
	Randolph	45.51
	Ripley	9.76
	Rush	25.55
	Sullivan	20.84
107	Shelby	28.48
	Starke	5.73
	St. Joseph	10.24
	Tippecanoe	44.72
	Vanderburg	12.89
	Vermilion	45.97
	Vigo	31.84
	Wabash	31.37
	Warren	26.35
	Washington	27.66
	Wayne	14.33
	White	42.01
		1830.35

STATE OF NEW YORK, }
County of New York, } ss:

I, Francis F. Flagg, vice-president of the American Express Company, being duly sworn on oath say that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

FRANCIS F. FLAGG,
Vice President.

Subscribed and sworn to before me, this 29th day of May, 1900.

GEO. E. PARKER,
Notary Public (9), New York County.

Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real estate and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned by the company on the first day of April, 1900, and which is not and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was ap-
108 plied by the company to uses having no relation whatever to the express business, the same being held by the company as investments and constitutes no part of its express plant. The market value of said real estate on April 1st, 1900, was not less than $2,026,747.88.

On the first day of April, 1900, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always have been kept, by the company, so long as it has owned the same, in the city of New York where its principal office is situated. No part of said investments were used by the company on the first day of April, 1900, or during the year then ending, in its express business, and said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and money loaned on collateral, which were on the first day of April, 1900, of the market value of not less than $18,640,461.13.

All of said stocks, bonds, mortgages and other personal securities or evidences of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by any authorized member or committee of the board of tax commissioners of Indiana who may be designated by said board for the purpose of making such inspection.

On the first day of April, 1900, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection
109 with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts, and other States and was, on that day, of the market value of not less than $3,094,545.28.

That all of the real estate hereinbefore mentioned is subject to

local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1900, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c. of the value of $1,597,294.20. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which the same was situated. That of said amount of $1,597,294.20 about $8000 in value was situated in the State of Indiana.

It appears from this return, and foregoing statements therein contained, the American Express Company on the first day of April, 1900, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value exceeding the market value of the entire aggregate interests of the associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and all of the tangible personal property be-
110 longing to said company and situated outside of said State.

This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of The Adams Express Company against The Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of The Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of The American Express Company against Indiana (165 U. S. 255).

American Express Company.

Itemized Statement of Mileage in the State of Indiana.

March 31st, 1900.

City, corp'n, or township.	Mileage.	
Allen county.		
Adams twp.	6.03	
Jackson twp.	4.23	
Jefferson twp.	6.05	
Wayne twp.	.89	
		17.20
Bartholomew county.		
Columbus twp.	3.30	
Clay twp.	1.16	
Flat Rock twp.	2.57	
Hamereek twp.	6.58	
Columbus, city	1.69	
		15.30
Benton county.		
Bolivar twp.	.71	
Center twp.	13.30	
Oak Grove twp.	9.64	
Richland twp.	2.24	
Union twp.	6.01	
York twp.	4.34	
Earl Park, corp.	2.68	
Fowler, corp.	1.47	
Oxford, twp.	.48	
		40.87
Boone county.		
Center, twp.	7.76	
Eagle, twp.	5.17	
Jefferson, twp.	1.60	
Jackson, twp.	4.23	
Sugar Creek, twp.	6.06	
Worth, twp.	4.52	
Washington, twp.	1.14	
Jamestown, corp.	.42	
Lebanon, corp.	1.19	
Thorntown, corp.	.83	
Zionsville, corp.	.69	
Marion, city	5.35	
		38.76
Carroll county.		
Clay, twp.	3.88	
Deer Creek, twp.	5.74	
Delphi, city	1.43	
Jefferson, twp.	6.07	
Madison, twp.	3.48	
Tippecanoe, twp.	4.17	
		24.75
Clark county.		
Carr, twp.	5.96	
Wood, twp.	5.84	
Silver Creek, twp.	.99	
		12.79
Clay county.		
Brazil, twp.	2.06	
Dick Johnson, twp.	8.50	
Van Buren, twp.	4.03	
Brazil, city	.64	
Carbon, corp.	.69	
		15.92
Clinton county.		
Center, twp.	2.19	
Jackson, twp.	4.07	
Kirklin, twp.	6.52	
Owen, twp.	1.15	
Perry, twp.	3.14	
Frankfort, city	1.37	
Union, city	4.31	
Rose, twp.	4.05	
Colfax, corp.	.73	
Kirklin, corp.	.52	
Rossville, corp.	.80	
		28.65

City, corp'n, or township.	Mileage.	
Dearborn county.		
Harrison, twp.	5.27	
Jackson, twp.	3.92	
Lawrenceburg, twp.	4.26	
Miller, twp.	3.07	
Manchester, twp.	.64	
York, twp.	7.68	
W. Harrison, corp.	.98	
		25.82
Delaware county.		
Center, twp.	3.77	
Liberty, twp.	5.97	
Mt. Pleasant, twp.	4.77	
Muncie, corp.	2.29	
Salem, twp.	3.74	
		20.54
112 **Decatur county.**		
Clay, twp.	9.60	
Adams, twp.	5.01	
Clinton, twp.	5.13	
Newpoint, corp.	.55	
Salt Creek, twp.	4.35	
Sand Creek	8.47	
Washington, twp.	19.20	
Westport, twp.	1.09	
Greensburg, city	1.29	
		54.74
Elkhart county.		
Cleveland, twp.	3.25	
Concord, twp.	6.29	
Elkhart, twp.	5.58	
Jackson, twp.	6.13	
Osceola, twp.	.74	
Elkhart, city	2.61	
Goshen, twp.	2.04	
		26.64
Fayette county.		
Connersville, twp.	3.01	
Columbia, twp.	5.96	
Harrison, twp.	4.03	
Connersville, city	1.17	
		14.16
Floyd county.		
New Albany	6.65	
New Albany, city	2.37	
		9.02
Fountain county.		
Cain, twp.	6.83	
Van Buren, twp.	11.31	
Troy, twp.	4.18	
Logan, twp.	1.49	
Shawnee, twp.	5.20	
Mill Creek, twp.	8.35	
Attica, city	1.26	
Veedersburg, corp.	1.50	
Covington, corp.	1.30	
		41.42
Franklin county.		
Ray, twp.	3.52	
Laurel, twp.	5.18	
Metamora, twp.	5.07	
Brookville, twp.	10.33	
Highland, twp.	1.69	
White Water, twp.	4.53	
Laurel, corp.	.30	
Brookville, corp.	.70	
		31.32

City, corp'n, or township.	Mileage.	
Grant county.		
Washington, twp.	2.82	
Pleasant, twp.	2.93	
Center, twp.	2.07	
Mill, twp.	3.70	
Fairmount, twp.	3.59	
Fairmount, corp.	1.53	
Jonesboro, corp.	.45	
Marion, city	2.85	
		19.94
Green county.		
Jackson, twp.	8.10	
Taylor, twp.	4.25	
Richland, twp.	6.00	
Grant, twp.	4.28	
Fairplay, twp.	5.05	
Stockton, twp.	6.89	
Bloomfield, twp.	1.40	
		36.57
Hamilton county.		
Clay, twp.	4.50	
Carmel, twp.	.75	
Washington, twp.	6.58	
Westfield, twp.	.92	
Adams, twp.	3.44	
Sheridan, twp.	.75	
		16.94
Hancock county.		
Vernon, twp.	6.38	
Brown, twp.	10.21	
Jackson, twp.	1.17	
Center, twp.	7.15	
Buck Creek, twp.	6.11	
Fortville, twp.	.61	
		31.63
Hendricks county.		
Washington, twp.	7.47	
Lincoln, twp.	10.88	
Middle, twp.	7.36	
Union, twp.	8.39	
Eel River, twp.	8.27	
Center, twp.	5.90	
Marion, twp.	2.71	
Clay, twp.	3.72	
Browns, twp.	.33	
Brownsburg, corp.	1.09	
Danville, corp.	.63	
		56.95
Henry county.		
Blue River, twp.	5.58	
Prairie, twp.	2.45	
Henry, twp.	6.40	
Greensburg, twp.	8.49	
Wayne, twp.	5.81	
Knightstown, corp.	.82	
Mooreland, corp.	.52	
New Castle, city	.01	
		29.88
Jasper county.		
Kankakee, twp.	3.80	
Wheatfield, twp.	2.78	
Walker, twp.	4.78	
Keener, twp.	.02	
Union, twp.	14.46	
Hanging Grove, twp.	3.12	
Mariol, twp.	8.37	
Rensselaer, twp.	1.17	
Newton, twp.	2.99	
		41.49
Jennings county.		
Center, twp.	2.60	
Sand Creek, twp.	5.62	
No. Vernon, twp.	.59	
		8.81
Johnson county.		
Franklin, twp.	3.87	
Needham, twp.	5.74	
Clark, twp.	.42	
Hensley, twp.	7.05	
Nineveh, twp.	1.34	
Franklin, city	1.55	
		19.97

City, corp'n, or township.	Mileage.	
Knox county.		
Vincennes	.26	
Vincennes, twp.	6.59	
		6.85
Kosciusko county.		
Van Buren, twp.	5.67	
Plain, twp.	5.46	
Wayne, twp.	5.51	
Clay, twp.	4.62	
Lake, twp.	4.80	
Milford, corp.	.32	
Leesburg, corp.	.50	
Claypool, corp.	.39	
Silver Lake, twp.	.21	
Warsaw, city	.90	
		28.38
Lake county.		
Hobart, twp.	9.32	
Calumet, twp.	11.81	
North, twp.	7.68	
St. Johns, twp.	12.97	
Cedar Creek, twp.	11.15	
Lowell, twp.	.55	
Wt. Creek, twp.	.97	
Hanover, twp.	6.02	
Hammond, city.	4.98	
		65.45
Laporte county.		
Dewey, twp.	15.14	
Case, twp.	8.53	
Clinton, twp.	5.82	
New Durham, twp.	5.58	
Westville, twp.	.59	
Coal Springs	6.75	
Springville	5.90	
Center, twp.	4.64	
Scipio, twp.	5.94	
Noble, twp.	5.94	
Hanna, twp.	4.82	
Springfield, twp.	1.03	
Michigan, twp.	3.96	
Michigan, city	5.49	
La Porte, twp.	1.31	
		81.35
Lawrence county.		
Marion, twp.	8.29	
Shawswick, twp.	11.38	
Marshall, twp.	9.87	
Indian Creek, twp.	.50	
Perry, twp.	7.83	
Bedford, city	2.11	
Mitchell, corp.	1.07	
		41.05
Madison county.		
Union, twp	3.65	
Anderson, twp.	9.50	
Fall Creek, twp.	6.26	
Green, twp.	1.85	
Van Buren, twp.	4.16	
Monroe, twp.	5.43	
Lafayette, twp.	5.83	
Adams, twp.	7.72	
Ingalls, corp.	.80	
Pendleton, corp.	.43	
Summitville, corp.	.51	
Alexandria, corp.	1.34	
Anderson, corp.	1.67	
Anderson, city	2.87	
		52.02
Marion county.		
Center, twp.	4.77	
Washington, twp.	8.60	
No. Indianapolis, twp.	.75	
Hughville, twp.	1.30	
Wayne, twp.	18.96	
Warren, twp.	9.46	
Franklin, twp.	8.49	
Pine, twp.	6.27	
Lawrence, twp.	7.54	
Indianapolis, city	21.24	
		87.38

City, corp'n, or township.	Mileage.	
Monroe county.		
Clear Creek, twp	6.56	
Perry, twp	6.54	
Bloomington, twp	1.60	
Richland, twp	6.28	
Bean Blossom, twp	6.81	
Bloomington, city	1.43	
		29.22
Montgomery county.		
Clark, twp	3.81	
Ladoga, twp	.87	
Scott, twp	1.72	
Union, twp	20.78	
Madison, twp	6.07	
Walnut, twp	6.33	
Wayne, twp	6.37	
Crawfordsville, city	2.80	
New Ross, corp	.51	
Waynetown, corp	.57	
		49.83
Morgan county.		
Jackson, twp	6.17	
Washington, twp	5.80	
Martinsville, corp	.58	
		12.55
Newton county.		
Jefferson, twp	1.43	
Lincoln, twp	6.72	
McClellan, twp	2.49	
Beaver, twp	6.49	
Washington, twp	2.93	
Iroquois, twp	10.83	
Grant, twp	7.19	
Morocco, twp	.92	
Brook, twp	.45	
Goodland, twp	1.01	
Colfax, twp	3.82	
Jackson, twp	6.02	
		50.30
Orange county.		
No. East, twp	4.06	
Orleans, twp	8.06	
Paoli, twp	6.75	
French Lick, twp	6.20	
Orleans, corp	.87	
Paoli, corp	1.35	
		27.29
Owen county.		
Wayne, twp	5.00	
Harrison, twp	3.72	
Taylor, twp	2.12	
Gosport, corp	.35	
		11.19
Parke county.		
Florida, twp	10.45	
Jackson, twp	1.07	
Green, twp	5.96	
Washington, twp	6.43	
Penn, twp	3.41	
Reserve, twp	10.65	
Wabash, twp	6.80	
Liberty, twp	6.81	
Rosedale, twp	.61	
		52.19
Porter county.		
Pleasant, twp	3.22	
Pine, twp	4.76	
Portage, twp	4.19	
W't Chester, twp	8.09	
		20.26
Posey county.		
Bethel, twp	5.91	
Robert, twp	10.31	
Smith, twp	4.38	
Harmony, twp	3.45	
Poseyville, corp	.38	
New Harmony, corp	.36	
		24.83
Pulaski county.		
Salem, twp	5.42	
White Post, twp	5.99	
Cass, twp	6.04	
Francisville, corp	.50	
		17.95

City, corp'n, or township.	Mileage.	
Putnam county.		
Jackson, twp	5.62	
Franklin, twp	11.42	
Russell, twp	6.01	
Floyd, twp	2.17	
Marion, twp	4.00	
Greencastle, twp	13.89	
Madison, twp	6.43	
Cloverdale, twp	5.44	
Warren, twp	6.54	
Monroe, twp	6.10	
Cloverdale, corp	.40	
Bainbridge, corp	.18	
Roachdale, corp	.29	
Greencastle, city	.44	
		68.93
Randolph county.		
Wayne, twp	4.06	
White River, twp	9.19	
Monroe, twp	5.46	
Greensburg, twp	6.91	
Washington, twp	5.12	
West River, twp	5.54	
Farmland, corp	.28	
Parker, city	.82	
Winchester, corp	1.01	
Union City, corp	1.04	
Lynn, corp	.76	
Bronson, corp	.27	
Nettle Creek, corp	5.05	
		45.51
Ripley county.		
Adams, twp	8.18	
Laughrey, twp	.58	
Batesville, corp	1.00	
		9.76
Rush county.		
Ripley, twp	5.65	
Posey, twp	1.84	
Jackson, twp	2.80	
Rushville, twp	7.16	
Anderson, twp	6.07	
Carthage, corp	1.40	
Rushville, city	.63	
		25.55
Sullivan county.		
Cass, twp	2.37	
Hamilton, twp	8.22	
Gill, twp	10.25	
		20.84
Shelby county.		
Noble, twp	1.08	
Liberty, twp	4.05	
Shelby, twp	2.26	
Addison, twp	5.16	
Brandywine, twp	5.18	
Sugar Creek, twp	6.39	
Moral, twp	3.76	
Shelbyville, corp	.60	
		28.48
Starke county.		
Railroad, twp	5.73	
		5.73
St. Joseph county.		
Harris, twp	4.18	
Clay, twp	4.59	
So. Bend, city	1.47	
		10.24
Tippecanoe county.		
Lauramie, twp	6.63	
Sheffield, twp	2.79	
Wea, twp	7.42	
Fairfield, twp	5.00	
Randolph, twp	5.90	
Union, twp	5.41	
Tippecanoe, twp	5.86	
Battle Ground, twp	.77	
Clark's Hill, corp	.65	
Lafayette, city	4.29	
		44.72

City, corp'n, or township.	Mileage.
Vanderburg county.	
Armstrong, twp	4.07
Germantown, twp	4.97
Center, twp	1.93
Pigeon, twp	.78
Evansville, city	1.14
	12.89
Vermilion county.	
Holt, twp	18.13
Highland, twp	11.06
Eugene, twp	6.09
Vermilion, twp	6.73
Clinton, twp	2.06
Cayuga, corp	.98
Newport, city	.24
Clinton, city	.68
	45.97
Vigo county.	
Nevins, twp	10.94
Otter Creek, twp	8.12
Harrison, twp	3.62
Sugar Creek, twp	4.91
Fayette, twp	2.92
Terre Haute, city	1.33
	31.84
Wabash county.	
Pleasant, twp	3.17
Chester, twp	7.04
Lagro, twp	5.31
Noble, twp	5.04
Waltz, twp	.35
Liberty, twp	7.09
No. Manchester, corp	.58
Wabash, city	2.76
	31.37

City, corp'n, or township.	Mileag
Warren county.	
Pike, twp	2.06
Steuben, twp	4.08
Jordan, twp	2.08
Adams, twp	6.02
Warren, twp	6.73
Washington, twp	.41
Mound, twp	4.97
	26
Washington county.	
Polk, twp	3.10
Pierce, twp	3.58
Washington, twp	13.34
Vernon, twp	2.65
Brown, twp	1.61
Saltillo, twp	1.28
Salem, corp	.96
Campbellsburg, corp	1.14
	27.
Wayne county.	
Jefferson, twp	2.12
Jackson, twp	4.88
Washington, twp	5.79
Milton, corp	.50
Hagerstown, corp	.18
Campbridge, city	.86
	14.
White county.	
Prairie, twp	5.63
Big Creek, twp	6.06
Honey Creek, twp	7.51
Monon, twp	14.37
Union, twp	4.41
Brookston, corp	.50
Reynolds, corp	.74
Monon, corp	1.21
Monticello, corp	1.58
	42.

116 That the statements of said report were and are true in sub stance and in fact.

That pursuant to the provisions of the statutes of Indiana in tha behalf the State board of tax commissioners of the State of Indiana convened in regular annual session on the 10th day of July, 1899 and continued in session until this — day of August 1900, and mus adjourn on or before the 31st day of August, 1900, and that upon the convening of said board the auditor of State of Indiana laid before said board the said report of said American Express Company and said board while so in session, assuming and pretending to be so authorized to do by the statutes of the State of Indiana and especially of the statute of said State of March 6th, 1893, the title of which is hereinbefore set out, assumed to make and gave out to your orator and said American Express Company and to the general public that it, said board had made, a preliminary valuation and assessment for the year 1899 of the property of said American Express Company in the State of Indiana, other than the tangible physical property which is valued and assessed for purposes of taxation by the township assessors and other local taxing officers of said State of Indiana pursuant to the provisions of the statute of said State, approved March 6th, 1891, and entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency;" that said preliminary assessment was $450.00 per mile of the 1,798 34/100 miles of lines or routes of said American Express Company in the State of Indiana.

That before making said preliminary assessment said board had

heard and received no testimony or evidence touching the value of said property of said American Express Company so as aforesaid assumed to be assessed by said board except that furnished by
117 and contained in the said report of said American Express Company except as hereinafter stated.

That on the 25th day of July, 1900, the said American Express Company by its counsel, appeared before said board of tax commissioners then sitting in open session to hear the matter and presented to said board the protest hereinafter mentioned.

That the said American Express Company by its counsel then and there stated that the situation as to the American Express Company's property not used in its express business and physically located outside of the State of Indiana, was on April 1, 1900, substantially the same as it was on April 1, 1898, except that some of the securities were of somewhat greater market and actual value. That said board then and there asked of said counsel whether the American Express Company's ocean mileage and mileage foreign to the United States was included in the total mileage of 163,000 miles shown by its report and whether that business was done by that express company's own messengers and agents and said counsel informed the board that such mileage was included and that as they were informed and believed since some time in 1897 said ocean and foreign business was done in substantially the same manner and by the same kind of agents and messengers as the company's business in the United States was and is done.

That the said report, filed by the American Express Company and said counsel's statement in connection therewith hereinabove alleged, constituted all the evidence before said board bearing upon the matter of the assessment to be made by said board against said company and upon that evidence and none other said board on the 27th day of July, 1900, by its preliminary assessment valued the property of said company in Indiana, exclusive of its tangible personal property actually located in that State on April 1, 1900, at $450 per mile for each of the 1830.35 miles of its routes in the State of
118 Indiana although said board knew on and before said 27 day of July, 1900, that this court in this cause No. 9620 had in 1898 restrained the certification by the auditor of state of the State of Indiana of taxes against said company on the same property assessed by said board in ——, in the same amount per mile and assessed upon substantially the same showing of fact, and that said restraining order was then still in force; that in arriving at said value the board pursued the same process or method of computation pursued by it in 1898 and shown in the original bill of complaint herein.

That thereafter on the 17th day of August 1900, said American Express Company filed with said board its protest against said preliminary assessment which was in writing as follows:

119 To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1900, of the property of this company in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450.00 per mile of the 1830 35/100 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

1. Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto:

2. Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 of the constitution of the State of Indiana and of section 23 of article 1 of the constitution of the State of Indiana:

3. Because the method of procedure adopted by your honorable body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and is in derogation of the rights privileges and immunities of the company and of the several holders of its capital interests or shares as guaranteed to it
120 and them respectively by the Constitution of the United States and the constitution of the State of Indiana:

4. Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation:

5. Because since the first day of January 1900, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1900, duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body:

6. Because the valuation and assessment as made by the local taxing officers in — in the State of Indiana of this company's property in that State, from which no appeal has been taken, is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana.

7. Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1900, pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1, 1900, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable
121 board under the statutes of Indiana:

8. Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 162,619 17/100 miles (of these about 3500 miles are in this country and the remainder is made up of water routes, railroad and other routes and lines outside of this country,) that by its said report this company is shown to have had on April 1, 1900, a capital of the face value of $18,000,000, then worth on the market 140 cents on the dollar or $25,200,000, and no more; that by its said report this company is shown to have had on said April 1, 1900, real estate without the State of Indiana not used in its express business which was valued for taxation at $1,129,200., and to have had on said last named date in the State of New York and subject to the jurisdiction of the State of New York for taxation purposes personal property consisting of bonds, stocks, mortgage notes and other like securities of the market value of not less than $18,640,461.13, and that it then had in Indiana 1830 35/100 miles of lines or routes and that this company's property in the State of Indiana valued and assessed by the local taxing officers in 1900, was assessed for taxation purposes at $17,256, and this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be

a. In excess of $135. per mile even if its said personal
122 property of the value of $18,640,461.13, outside of Indiana and not used in its express business be included in arriving at said value; and

b. If the value of said personal property outside of Indiana and not used in this company's express business be, as it should be excluded, could not be in excess of $30.00 per mile; and

c. If the mileage other than water and foreign routes be taken as the total mileage and said $18,640,461.13, of value of personal property, outside of Indiana and not used in this company's express business be excluded, as it should be excluded, could not be in excess of $155. per mile.

Wherefore the American Express Company respectfully asks your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1900, of $450 per mile upon said 1830 35/100 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $30.00 per mile for said 1830.35/100 miles of its lines or routes in the State of Indiana; and that this protest be received, filed and considered by your honorable body.

Respectfully submitted,

THE AMERICAN EXPRESS COMPANY,
By BAKER & DANIELS, *Its Att'ys.*

Indianapolis, Indiana, Aug. 17, 1900.

123 Your orator further avers that neither said auditor of State nor said board nor any other officer of the State of Indiana ever made any objection to said report or to any item, statement or part thereof so filed by said American Express Company, but that said auditor received and accepted the same as filed and laid the same before said board as above stated; that neither said auditor or said board nor any other officer of the State of Indiana ever requested your orator or his said company to furnish him or it any other or further information respecting said company's property and routes.

That all of the matters and facts stated and set forth in said written protest above copied and set out are true in substance and in fact and your orator now here alleges their truth as allegations or charges herein and asks that they be so considered by the court with the same effect as though now here repeated as independent allegations of fact herein.

Your orator further alleges that the amount of the State, county and other taxes which will be certified by said auditor of State to the auditors of the several acounties of the State of Indiana, in which said company has lines and routes if said assessment shall be made final and shall stand, payable by said company, for the year 1900, will be over $14,000.00, all of which is in controversy and dispute in this suit; that the said State board of tax commissioners, as your orator has good reason to believe and does believe, will make its said preliminary assessment and valuation against said company final and will before it adjourns, viz: before August 31st, 1899, certify said final assessment to said auditor of State; that said auditor will forthwith, as your orator has good reason to believe and does believe, if he is not restrained from so doing, apportion said valuation and assessment to the county auditors for distribution among the several counties, townships and
124 towns, under the provisions of said act of March, 1893, and forthwith certify such apportionment to the several county auditors of said counties unless he shall be restrained by the order of this court. That an emergency exists for the granting of a restraining order against the certification by said auditor of State of said valuation and assessment to the said county auditors.

Your orator further alleges that the certification of said assessment by said defendant to the several county auditors will work an irreparable and lasting injury to said American Express Company and to your orator as president and shareholder therein and to each and all of the holders of shares or interests in its capital for whose benefit your orator as herein stated as well as for his own and said company's benefit brings and files this his supplemental bill as he brought the original bill of complaint.

That the act of certifying said assessment and apportionment by the defendant as said State auditor to the said several county auditors so about to be done by said defendant would be and is without authority of law and in violation of law in this, towit:

1. That said pretended statute of March 6, 1893, the title of which is hereinabove quoted, is invalid and void because in respect of express companies and especially of the said American Express Company, it amends a statute, namely, said act of March 6, 1891, the title of which is hereinabove quoted, which amended act was itself unconstitutional and void in that it violated section 8 of article 1 of the Constitution of the United States by attempting to regulate interstate commerce as conducted by the class of common carriers designated in said amended act as express companies.

2. That said pretended statute of March 6, 1893, under which said preliminary assessment, which is about to be made final,
125 apportioned and certified to the county auditors as aforesaid, was made, is in violation of article 1, sections 21 and 23 of the constitution of Indiana and section 1 of the 14th amendment to the Constitution of the United States in that by said pretended statute the respective shareholders of said The American Express Company, your orator and said company, are deprived of their property without due process of law.

3. That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the property of said The American Express Company in the year 1900 other than its tangible property, deprives the said American Express Company and each of its shareholders and especially your orator, of its and their property without due process of law and in violation of the provisions of the Constitution of the United States and of the constitution of the State of Indiana in that behalf in that it assesses for taxation purposes in Indiana personal property of said American Express Company owned and held by it in the city of New York and State of New York, consisting of bonds, stocks, mortgage notes and other like securities, no part of which property is now or ever has been used by said company in connection with its express business in Indiana or elsewhere, and no part of which is or has ever been a part of or connected with the plan of said company as an express company.

4. That said pretended statute of March 6, 1893, is in violation of section 1 of the 14th amendment to the Constitution of the United States in that by said statute the said American Express Company

and each of its shareholders and especially your orator, are respectively denied the equal protection of the laws.

5. That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the property of said American Express Company in the year 1900
126 other than its tangible property in Indiana, denies to the said company and to each of its shareholders and especially to your orator the equal protection of the laws.

6. That by the method of procedure adopted and followed by said State board in assessing in 1900, said express company's property, and especially by its construing said act of 1893, to require that only the railroad mileage in the United States of the lines or routes operated by said company should be considered by said board as constituting the total mileage mentioned in said act, and thereby excluding all of the water routes and foreign routes operated by said company, the said company, its several shareholders and especially your orator are deprived of their property without due process of law and are denied the equal protection of the law in violation of the provisions of the Constitution of the United States guaranteeing said respective rights.

7. That said pretended statute of March 6, 1893, and said pretended preliminary assessment and valuation of the property of said American Express Company of said State board in 1900, if the same shall be made final and shall stand, are in contravention of section 1 of the 14th amendment to the Constitution of the United States and of section 8 of article 1 and of section 10 of article 1 of the Constitution of the United States respectively.

8. That by the method of procedure adopted by said State board in assessing in 1900 the property of said American Express Company in the State of Indiana, exclusive of its property by law required to be assessed by local taxing officers, said board has in making the said assessment against said American Express Company valued and assessed for taxation in said State of Indiana personal property of said company owned and held by said company and physically situate in the city of New York in the State of New York and not used by it in connection with its express
127 business and forming no part of its express business plant and thereby when said assessment shall be made final the said company, its several shareholders and especially your orator, will be deprived of their property without due process of law and will be denied the equal protection of the laws in contravention of the provisions of the Constitution of the United States guaranteeing said rights respectively.

Your orator further charges that the aggregate of the State, county and township taxes for 1900 in the county in this State where the aggregate levy is the smallest is in excess of 150 cents upon each $100.00 of assessed valuation and such aggregate in the county in this State where said aggregate is the highest is more than 300 cents upon each $100.00 of assessed valuation.

That said express company has paid all taxes levied and assessed

upon and against its tangible property by the local taxing officers in the several counties where its lines are for the year 1900, so far as the same are due and is ready and willing to pay as the same shall mature all such taxes so *as* assessed for the year 1900, and said American Express Company is ready and willing to, and your orator for it and in his own behalf now offers so to do to bring into this court for payment by the court's direction unto the proper State and county officers any and all taxes of whatsoever kind that have been levied or are leviable against said company in Indiana, except taxes levied and assessed against said company in the State of Indiana by the State board of tax commissioners in the years 1898, 1899 and 1900; and your orator for said express company and in his own behalf is ready and willing to pay and now offers to secure the payment of all or such part of said last mentioned taxes to the approval of this court, that the court may upon final hearing of this cause find should be paid by said express company.

Your orator further alleges that said American Express Com-
128 pany is, and for many years last past has been, the owner of real estate situate in Marion county and State of Indiana, being the real estate mentioned in its said report filed in 1900, in the office of the auditor of state of the State of Indiana; that the said pretended assessment so made in 1900, and about to be made final, by the said State board, will cast a cloud upon its title to said real estate; that said express company has, and for many years last past has had, express lines or routes in and through said Marion county, and 57 other counties in Indiana and that actions or suits in each of said several counties to enforce the collection of said pretended taxes so as aforesaid about to be certified to the auditors of said counties against said American Express Company or actions to restrain and enjoin the enforcement and collection of said alleged and pretended taxes would necessarily involve large expense and o-tlay of time and money to the State of Indiana and to the cities and towns in which said express lines and routes are and to said American Express Company and its shareholders by reason of the multiplicity of suits and that such multiplicity of suits is avoided by this suit.

In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, to the end therefore that the defendant against whom process is hereinafter prayed, if he can, show why your orator should not have the relief hereby prayed, and that he the said defendant, may but not under oath, oath being hereby waived, to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make, to all and singular the matters and things hereinbefore set forth and alleged, as fully and completely as if the same were here repeated, and he, the said defendant, thereunto severally and specifically interrogated paragraph by paragraph; and that a temporary injunction may forthwith issue herein, without notice,
129 against the defendant William H. Hart, as auditor of state of the State of Indiana enjoining and restraining him from

certifying to each or any or all of the auditors of the respective counties in Indiana where said American Express Company has express lines or routes, valuations, assessments and taxes made and levied by said State board against said American Express Company in the year 1900 or any part of such valuations, assessments and taxes until a hearing can be had herein and that upon the final hearing of this cause said defendant be perpetually enjoined from certifying valuations, assessments and taxes made, levied and assessed by said State board against said American Express Company in and for the year 1900, and that the cloud cast upon the property of said American Express Company in Indiana by reason of said pretended assessment of said State board in 1900 and the lien thereby attempted to be created upon its property, real and personal, in Indiana, be removed: that said taxes, valuations and assessments be respectively declared invalid and void, and that there be granted unto your orator all other proper relief in the premises.

And may it please your honors to grant unto your orator the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant William H. Hart, as auditor of state of the State of Indiana, commanding him at the proper time, and under the proper penalty, both to be named therein, to be and appear in this honorable court, then and there to answer, all and singular the matters and things hereinbefore stated and charged, and stand to perform and abide such further order, direction and decree as may be made against him.

And your orator, as in duty bound, will ever pray, etc.

JAMES C. FARGO,
As President of the American Express Company,
By BAKER & DANIELS,
His Solicitors.

CARTER & LEDYARD,
BAKER & DANIELS,
Of Counsel.

130 UNITED STATES OF AMERICA, }
District of Indiana, } *ss:*

R. D. Hughes being duly sworn, on his oath says he is general superintendent of the American Express Company mentioned in the foregoing bill of complaint and the same person who signed the tax reports of that company filed with the auditor of state of the State of Indiana in the year —, as in said bill of complaint mentioned; that he is authorized to and does sign this affidavit in behalf of the complainant in said cause; that he has read the foregoing bill of complaint and knows its contents and that the matters and facts therein stated are true as he is informed and verily believes.

—— ——.

Subscribed and sworn to this — day of August, 1899.

—— ——,
Clerk U. S. Circuit Court, District of Indiana.

And now the defendant William H. Hart by his said solicitor enters his appearance herein to each said supplemental bills or bills in the nature of supplemental bills.

131 And afterwards to wit: at the May term of said court, on the 21st day of August, 1901, in recess thereof, the following further proceedings in the above entitled cause were had towit:

Come now the parties in each of the above entitled suits, the complainants respectively by Baker & Daniels, their solicitors, and the defendant in each of said suits by William L. Taylor, attorney general of the State of Indiana, his solicitor, and file a stipulation herein signed by said parties as their respective solicitors as follows:

Whereas in the years 1898 and 1899 and 1900 the State board of tax commissioners of the State of Indiana made certain assessments and valuations for taxation purposes against the American Express Company and the National Express Company whereby it valued in each year the lines or routes of those companies in Indiana, in each of said years at $450.00 per mile; and whereas in the year 1898 the above named complainants as president of the said American Express Company and the said National Express Company respectively filed in the circuit court of the United States for the district of Indiana sitting in chancery in causes No. 9620 and No. 9621 their certain bills in equity against Americus C. Daily, then auditor of state of the State of Indiana, alleging that said assessment of 1898 was for divers reasons, in said bills set out, void and seeking to enjoin said auditor of State from certifying said assessments to the various county auditors of the State of Indiana:

And whereas in each of said causes the said court granted a preliminary injunction, which is still in full force, restraining said auditor from so certifying said assessment; and whereas afterward and while said injunction was in full force said Daily's term of office as such auditor expired and the above named defendant, William H. Hart, as his duly elected and qualified successor in said office became and has ever since remained and now is the auditor of state of the State of Indiana, and whereas after said William H. Hart

132 became such auditor, by proper proceedings in said cause, he was by substitution, made the defendant in each of the said causes and said injunction was by proper proceedings in said causes made as effective against him as such auditor as it had been against said Daily while he was auditor, which injunction still stands in full force against said William H. Hart, present auditor of state of the State of Indiana.

And whereas the State board of tax commissioners of the State of Indiana has in the year 1901, again made a certain assessment and valuation for taxation purposes for the year 1901 against said American Express Company whereby it has again valued the lines and routes in Indiana of each of said companies at $450.00; and whereby the said complainants by supplemental bills in said causes caused said order of injunction to be extended in 1899 to

that year's assessment which order of injunction is still in fore
And whereas the said complainant James C. Fargo as president
said American Express Company, and the said complainant Li
ingston Johnston as president of said National Express Compan
has prepared and are by their solicitors of record in said caus
Baker & Daniels, about to file in said court in said causes thei
supplemental bills or bills in the nature of a supplemental bil
which have been exhibited to said defendant, William H. Har
auditor of State and to said William L. Taylor, attorney genera
of the State of Indiana, his solicitor of record, in said cause i
which, and upon the same grounds stated in said original bills i
said causes said complainants Fargo and Johnston to remove th
doubt, if any, that the present injunction embraces a prohibitio
against the certification of the said assessment of 1901 to the severa
county auditors, seek to enjoin the said William H. Hart as auditor
of state of the State of Indiana from certifying to the several county
auditors of Indiana the assessment and valuation for taxation pur-
poses so made in 1901 by the said State board of tax commissioners
and said complainants have expressed the purpose to press a
133 motion for such injunction to an immediate hearing: And
whereas the said defendant does not object to said applica-
tion being made by way of supplemental bills in said causes instead
of original bills in a new suit between the same parties in the said
court, but for convenience of parties agrees with complainant that,
owing to the fact that the original and supplemental bills seek to
settle but one dispute which now by the said assessment of 1901 re-
lates to the year 1901 as well as the years 1898 and 1899 and 1900
the whole controversy should be determined in this suit: And
whereas it is inconvenient for both parties to now present to the
court the application for an injunction contained in said supple-
mental bill:

Wherefore the parties now here stipulate as hereinafter stated and agree that this stipulation shall become a part of the record in said cause:

1. The complainants may and now do file respectively their said supplemental bills with the same effect as though permission to file each of them has been first given by said court.

2. The defendant will not certify the said assessments against each of said express companies made by the State board of tax commissioners in 1900 or any part of it to the auditor of any county in Indiana until the court shall have heard and ruled upon the application for a temporary injunction or restraining order contained in each of said supplemental bills, but the defendant will until said application is so ruled upon, treat the present injunction as having been extended by the court to cover the said assessment made by the State board of tax commissioners in the year 1901 against said American Express Company and said National Express Company.

3. That the parties will both make diligent effort to bring said application to a hearing as soon as the judge before whom the cases

are each pending, or other proper judge, can be present in said court and can hear it.

Dated Indianapolis, Indiana, August 21, 1901.

134 BAKER & DANIELS,
Solicitors for James C. Fargo, Pres't American Express Company, and Livingston Johnston, Pres't National Express Co.
WILLIAM L. TAYLOR,
Attorney General of Indiana, Solicitor for Wm. H. Hart, Auditor of State of Indiana.

And now the complainants in pursuance of said stipulation file their respective supplemental bills or bills in the nature of supplemental bills herein in the words and figures following:

To the honorable the judges of the circuit court of the United States for the district of Indiana:

Your orator, James C. Fargo, as president of the American Express Company and a resident citizen of the State of New York, brings this his bill of complaint against William H. Hart, as auditor of state of the State of Indiana and a resident citizen of the State of Indiana and humbly complaining, showeth as is shown by his original bill herein, unto your honors by this his third supplemental bill or bills in the nature of a supplemental bill, that your orator is the president and a shareholder of the American Express Company which is a joint stock company or association organized under the laws of the State of New York many years ago and continuously from the date of its organization to the present time existing under said laws; that said company has its principal place of business in the city of New York in the State of New York and in said city its meetings are held and its books and general assets are kept and owned; that said company is composed of more than 3,000 members or copartners who own 180,000 equal shares or interests in said company represented by certificates having a nominal value for the purposes of the agreement under which said company was constituted of $100.00 each and which for several years last past have had a market value of not less than $100.00 per share. That all of said members or shareholders have a joint ownership and interest in the cause of action here-
135 inafter stated but they are too numerous to be joined as parties hereto and it is impracticable to bring them all before the court because they are widely scattered and live in different parts of more than 15 States of the United States and that some of them are now temporarily beyond seas and your orator therefore as such president and member or shareholder brings and files this third supplemental bill of complaint or bill in the nature of a supplemental bill not only on his own behalf but on behalf of the said company and each and all of its members:

That said company is and for many years last past has been conducting the business of a common carrier popularly and technically described as the express business, that is to say, the quick and safe transportation and transmission over public routes and highways by

means of railways, steam boats, steamships and other public carriage of moneys, bank-bills, bonds and securities and packages containing articles of greater or less value as contradistinguished from ordinary freight; that for more than twenty-five years last past said company has been and still is conducting such express business in the State of Indiana and that in the conduct of its said business said The American Express Company has for many years last past carried, transported and transmitted packages of money, bonds, securities, goods, wares and merchandise into the State of Indiana from the States of New York, Pennsylvania, Ohio, Illinois and many other States of the United States and from the State of Indiana into said other States of the United States and through the State of Indiana from and to other States of the United States and still continues so to carry, transport and transmit such packages and property; that it neither owns or operates any railroads or means of carriage of its own but does said business under contracts with railroad companies and other common carriers owning and operating railroads, rolling stock, ships and other public conveyances; Your orator further showeth that the defendant William H. Hart, is and at the
136 times hereinafter mentioned, was the auditor of state of the State of Indiana.

That on the 6th day of March, 1893, an act of the General Assembly of the State of Indiana entitled "An act supplementary to and amendatory of an act entitled 'An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency;' approved March 6, 1891, and providing for the taxation of telegraph, telephone, palace car, sleeping car, drawing-room car, express and fast freight joint stock associations, companies, co-partnerships and corporations, transacting business in the State of Indiana, repealing section- 68, 69, 70 and 71 of said act and all laws in conflict therewith and declaring an emergency:" having been duly approved by the governor, went into effect in the State of Indiana as a statute of said State, and the same has never been repealed or amended by any subsequent legislative enactment: that pursuant to the provisions of said statute and especially of section 3 thereof, said The American Express Company in the year 1901 filed in the office of the auditor of state of the State of Indiana its report for said year 1901 that a copy of said report is as follows:

137 Express companies.

1901.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests 180,000 of $100. each ..... $18,000,000.

Item 2. No. of interests issued and outstanding 180,000 interests.

a. Par or face value of each interest..... $100.

Item 3. Principal place of business New York, in the State of New York.

Item 4. Market value of each interest on the 1st day of April, 1901 ..... $—

a. If interests have no market value then state actual value thereof, $150. per interest.

This company is not a corporation but a partnership or joint stock association organized under articles of agreement between its members.

It possesses no rights, privileges or franchises other than such as are enjoyed by any private individual or association of individuals.

Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the State of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

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County.	Description of real estate, structure, machinery, etc.	Assessed value.
Bartholomew	Personal property	$65.
Boone	" "	20.
Benton	" "	50.
Clinton	" "	325.
Clay	" "	45.
Decatur	" "	150.
Delaware	" "	350.
Dearborn	" "	20
Elkhart	" "	370
Floyd	" "	175
Fayette	" "	100
Fountain	" "	35

Grant	Personal property			335.
Greene	"	"		30.
Henry	"	"		30.
Hancock	"	"		20.
Hamilton	"	"		15.
Jasper	"	"		30.
Kosciusko	"	"		35.
Knox	"	"		150.
Lake	"	"		225.
Laporte	"	"		350.
Lawrence	"	"		200.
Madison	"	"		350.
Montgomery	"	"		250.
Monroe	"	"		150.
Marion	"	"	& real estate	9600.
Newton	"	"		25.
Orange	"	"		50.
Putnam	"	"		275.
Randolph	"	"		185.
139 Ripley	Personal property			125.
St. Joseph	"	"		225.
Sullivan	"	"		45.
Tippecanoe	"	"		500.
Vigo	"	"		500.
Vanderburg	"	"		550.
Vermilion	"	"		100.
Wabash	"	"		210.
Washington	"	"		20.
White	"	"		55.
Wayne	"	"		1095.
				$17,455.

The above personal property consists of horses, wagons, harnesses, safes, &c.

The following property of like description, is in use by the National Express Company and is assessed to it for local taxation but actually belongs to this company—being used by the National Express Company as agent of this company.

Allen	Horses,	wagons,	office	fixtures,	scales,	safes,	...	$625.
Elkhart	"	"	"	"	"	"	...	108.
Howard	"	"	"	"	"	"	...	143.
Wells	"	"	"	"	"	"	...	140.

140 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation situate outside of the State of Indiana, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.
Building 55–61 Hudson St.	New York, N. Y..	Rented.....	$275,000.
Building 157 Hudson St.	New York, N. Y..	Rented.....	13,000.
Building 365 Broadway.	New York, N. Y..	Rented.....	440,000.
Building, Broome & Elm Sts.	New York, N. Y..	Rented.....	100,000.
Building Main & Erie Sts.	Buffalo, N. Y.....	Unoccupied...	69,000.
Building, Exchange St...	Buffalo, N. Y.....	Rented.....	16,800.
Building, Carroll & Friend St.	Boston, Mass.....	Rented.....	246,000.
Building Larned St.....	Detroit, Mich	Unoccupied...	10,000.
Building Marshall St....	Paterson, N. J....	Unoccupied...	1,400.

The foregoing real estate is of the market value of not less than $2,026,747.88.

Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.
None.		

141 Item 8. *a.* Total length of its lines or routes over which it transports merchandise freight or express matter including 4363.38 miles over which National Express Company so transports merely as agent of and for account of this company..... 164,019.85 miles.

b. Total length of such lines or routes as are outside of the State of Indiana including 3948.68 miles over which National Express Company so transports merely as agent of and for account of this company ..... 161,756.70 miles.

c. Total length of its lines or routes within each of the counties and townships in the State of Indiana, viz:

Counties.	Miles. Hdths.	Counties.	Miles. Hdths.
Allen	17.20	Henry	29.88
Bartholomew	15.30	Jasper	41.49
Benton	40.87	Jennings	8.81
Boone	38.76	Johnson	19.97
Carroll	24.75	Knox	6.85
Clark	12.79	Kosciusko	28.38
Clay	15.92	Lake	65.45
Clinton	28.65	Laporte	81.35
Dearborn	25.82	Lawrence	41.05
Delaware	20.54	Madison	52.02
Decatur	54.74	Marion	87.38
Elkhart	26.64	Monroe	29.22
Fayette	14.16	Montgomery	49.83
Floyd	9.02	Morgan	12.55
Fountain	41.42	Newton	50.30
Franklin	31.32	Orange	27.29
Grant	19.94	Owen	11.19
Greene	36.57	Parke	52.19
Hamilton	16.94	Porter	20.26
Hancock	31.63	Posey	24.83
Hendricks	56.95	Pulaski	17.95
142 Putnam	68.93	Union	8.90
Randolph	45.51	Vanderburg	12.89
Ripley	9.76	Vermilion	45.97
Rush	25.55	Vigo	31.84
Sullivan	20.84	Wabash	31.37
Shelby	28.48	Warren	26.35
Starke	5.73	Washington	27.66
St. Joseph	10.24	Wayne	23.53
Tippecanoe	44.72	White	42.01
			1848.45

And the following lines or routes over which National Express Company so transports merely as agent of and for account of this company:

Adams	16.76	Marshall	22.53
Allen	28.21	Montgomery	15.90
Clinton	23.26	Parke	.38
Elkhart	5.34	Porter	32.35
Fountain	25.12	St. Joseph	30.72
Grant	25.69	Starke	15.04
Huntington	8.10	Tippecanoe	6.65
Howard	26.74	Vermilion	6.85
Kosciusko	20.30	Wells	15.75
Lake	34.56	Whitley	18.38
Laporte	36.17		
Total			2263.15

STATE OF NEW YORK, } ss:
County of New York, }

Francis F. Flagg, vice president of the American Express Company, being duly sworn on oath says that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

FRANCIS F. FLAGG,
Vice President.

Subscribed and sworn to before me, this 24th day of May, 1901.

GEO. E. PARKER,
Notary Public (71), *New York County.*

143 Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned by the company on the first day of April, 1901, and which is not, and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to uses having no relation whatever to the express

business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April 1, 1901, was not less than $2,026,747.88.

On the first day of April, 1901, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept, by the company, so long as it had owned the same, in the city of New York where its principal office is situated. No part of said investments was used by the company on the first day of April, 1901, or during the year then ending, in its express business, and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said invest-
144 ments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral, which were on the first day of April, 1901, of the market value of not less than $19,259,933.53

All of said stocks, bonds, mortgages and other personal securities and evidences of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by an authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first day of April, 1901, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts and other States and was, on that day, of the market value of not less than $3,081,672.06.

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1901, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c. of the value of $1,659,321.74. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which the same was situated. That of said amount of $1,659,321.74, about $8,000 in value was situ-
145 ated in *in* the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1901, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value about equalling the market value of the entire aggregate in-

terests of the associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and all of the tangible personal property belonging to said company and situated outside of said State.

This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of The Adams Express Company against The Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of The Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of The American Express Company against Indiana (165 U. S. 255).

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No. 1.

(*Supplementary Report.*)

American Express Company.

Itemized Statement of Mileage in the State of Indiana March 31st, 1901.

City, corp'n, or township.	Mileage.	
Allen county:		
Adams twp.	6.03	
Jackson twp.	4.23	
Jefferson twp.	6.05	
Wayne twp.	.89	
		17.20
Bartholomew county:		
Columbus twp.	3.30	
Clay twp.	1.16	
Flat Rock twp.	2.57	
Hamcreek twp.	6.58	
Columbus city	1.69	
		15.30
Benton county:		
Bolivar twp.	.71	
Center twp.	13.30	
Oak Grove twp.	9.64	
Richland twp.	2.24	
Union twp.	6.01	
York twp.	4.34	
Earl Park corp.	2.68	
Fowler corp.	1.47	
Oxford twp.	.48	
		40.87

Boone county:

Center twp.	7.76	
Eagle twp.	5.17	
Jefferson twp.	1.60	
Jackson twp.	4.23	
Sugar Creek twp.	6.06	
Worth twp.	4.52	
Washington twp.	1.14	
Jamestown corp.	.42	
Lebanon corp.	1.19	
Thorntown corp.	.63	
Zionsville corp.	.69	
Marion city	5.35	
		38.76

Carroll county:

Clay twp.	3.86	
Deer Creek twp.	5.74	
Delphi city	1.43	
Jefferson twp.	6.07	
Madison twp.	3.48	
Tippecanoe twp.	4.17	
		24.75

Clark county:

Carr twp.	5.96	
Wood twp.	5.84	
Silver Creek twp.	.99	
		12.79

Clay county:

Brazil twp.	2.06	
Dick Johnson twp.	8.50	
Van Buren twp.	4.03	
Brazil city	.64	
Carbon corp.	.69	
		15.92

Clinton county:

Center twp.	2.19	
Jackson twp.	4.07	
Kirklin twp.	6.52	
Owen twp.	1.15	
Perry twp.	3.14	
Frankfort city	1.37	
Union city	4.31	
Rose twp.	4.05	
Colfax corp.	.73	
Kirklin corp.	.52	
147 Rossville corp.	.60	
		28.65

Dearborn county:

Harrison twp.	5.27	
Jackson twp.	3.92	
Lawrenceburg twp.	4.26	
Miller twp.	3.07	
Manchester twp.	.64	
York twp.	7.68	
W. Harrison corp.	.98	
		25.82

Delaware county:

Center twp.	10.75	
Liberty twp.	5.97	
Mt. Pleasant twp.	4.77	
Muncie corp.	2.29	
Salem twp.	3.74	
		20.54

Decatur county:

Clay twp.	9.60	
Adams twp.	5.01	
Clinton twp.	5.18	
Newpoint corp.	.55	
Salt Creek twp.	4.35	
Sand Creek twp.	8.47	
Washington twp.	19.20	
Westport twp.	1.09	
Greensburg city	1.29	
		54.74

Elkhart county:

Cleveland twp.	3.25	
Concord twp.	6.29	
Elkhart twp.	5.58	
Jackson twp.	6.13	
Oscola twp.	.74	
Elkhart city	2.61	
Goshen twp.	2.04	
		26.64

Fayette county:

Connersville twp.	3.00	
Columbia twp.	5.96	
Harrison twp.	4.03	
Connersville city	1.71	
		14.16

Floyd county:

New Albany	6.65	
New Albany city	2.37	
		9.02

Fountain county:

Cain twp.	6.63	
Van Buren twp.	11.31	
Troy twp.	4.18	
Logan twp.	1.49	
Shawnee twp.	5.20	
Mill Creek twp.	8.35	
Attica city	1.26	
Veedersburg corp.	1.50	
Covington corp.	1.50	
		41.42

Franklin county:

Ray twp.	3.52	
Laurel twp.	5.18	
Matamora twp.	5.07	
Brookville twp.	10.33	
Highland twp.	1.69	
White Water twp.	4.53	
Laurel corp.	.30	
Brookville corp.	.70	
		31.32

Grant county:

Washington twp.	2.82	
Pleasant twp.	2.93	
Center twp.	2.07	
Mill twp.	3.70	
Fairmount twp.	8.77	
148 Fairmount corp.	1.53	
Jonesboro corp.	.45	
Marion city	2.85	
		19.94

Green county:

Jackson twp.	8.10	
Taylor twp.	4.25	
Richland twp.	6.00	
Grant twp.	4.28	
Fairplay twp.	5.65	
Stockton twp.	6.89	
Bloomfield city	1.40	
		36.57

Hamilton county:

Clay twp.	4.50	
Carmel twp.	.75	
Washington twp.	6.58	
Westfield twp.	.92	
Adams twp.	3.44	
Sheridan twp.	.75	
		16.94

Hancock county:

Vernon twp	6.38	
Brown twp	10.21	
Jackson twp	1.17	
Center twp	7.15	
Buck Creek twp	6.11	
Fortville twp	.61	
		31.63

Hendricks county:

Washington twp	7.47	
Lincoln twp	10.88	
Middle twp	7.36	
Union twp	8.39	
Eel River twp	8.27	
Center twp	5.90	
Marion twp	2.71	
Clay twp	3.72	
Brown twp	.53	
Brownsburg corp	1.09	
Danville corp	.63	
		56.95

Henry county:

Blue River twp	5.58	
Prairie twp	2.45	
Henry twp	6.40	
Grensburg twp	8.49	
Wayne twp	5.81	
Knightstown corp	.82	
Moreland corp	.32	
New Castle city	.01	
		29.88

Jasper county:

Kankakee twp	3.80	
Wheatfield twp	2.78	
Walker twp	4.78	
Keener twp	.02	
Untion twp	14.46	
Hanging Grove twp	3.12	
Mariol twp	8.37	
Rensselaer twp	1.17	
Newton twp	2.99	
		41.99

Jennings county:

Center twp	2.60	
San Creek twp	5.62	
No. Vernon twp	.59	
		8.81

Johnson county:		
Franklin twp.	3.87	
Needham twp.	5.74	
Clark twp.	.42	
Hensley twp.	7.05	
Nineveh twp.	1.34	
Franklin city	1.55	
	———	19.97
149 Knox county:		
Vincennes	.26	
Vincennes twp	6.59	
	———	6.85
Kosciusko county:		
Van Buren twp.	5.67	
Plain twp	5.46	
Wayne twp.	5.51	
Clay twp.	4.62	
Lake twp.	4.80	
Milford corp.	.32	
Leesburg corp.	.50	
Claypool corp.	.39	
Silver Lake corp.	.21	
Warsaw city	.90	
	———	28.38
Lake county:		
Hobart twp.	9.32	
Calumet twp.	11.81	
North twp.	7.68	
St. Johns twp.	12.97	
Cedar Creek twp.	11.15	
Lowell twp.	.55	
Wt. Creek twp.	.97	
Hanover twp.	6.02	
Hammond city	4.98	
	———	65.45
Laporte county:		
Dewey twp	15.14	
Case twp.	8.55	
Clinton twp.	5.82	
New Durham twp.	5.58	
Westville twp.	.50	
Coal Springs twp.	6.75	
Springville twp.	5.90	
Center twp.	4.64	
Scipio twp.	5.94	
Noble twp.	5.94	
Hanna twp.	4.82	
Springfield twp.	1.03	

Michigan twp	3.96	
Michigan city	5.49	
Laporte twp	1.31	
		81.35

Lawrence county:

Marion twp	8.29	
Shawswick twp	11.38	
Marshall twp	9.87	
Indiana Creek twp	.50	
Perry twp	7.83	
Bedford city	2.11	
Mitchell corp	1.07	
		41.05

Madison county:

Union twp	3.65	
Anderson twp	9.50	
Fall Creek twp	6.26	
Green twp	1.85	
Van Buren twp	4.16	
Monroe twp	5.43	
Lafayette twp	5.83	
Adams twp	7.72	
Ingalls corp	.80	
Pendleton corp	.43	
Summitville corp	.51	
Alexandria corp	1.34	
Anderson corp	1.67	
Anderson city	2.87	
		52.02

Marion county:

Center twp	4.77	
Washington twp	8.60	
150 No. Indianapolis twp	.75	
Haughville twp	1.30	
Wayne twp	18.96	
Warren twp	9.46	
Franklin twp	8.49	
Pine twp	6.27	
Lawrence twp	7.54	
Indianapolis city	21.24	
		87.38

Monroe county:

Clear Creek twp	6.56	
Perry twp	6.54	
Bloomington twp	1.60	
Richland twp	6.28	
Bean Blossom twp	6.81	
Bloomington city	1.43	
		29.22

Montgomery county:

Clark twp	3.81	
Ladoga twp	.87	
Scott twp	1.72	
Union twp	20.78	
Madison twp	6.07	
Walnut twp	6.33	
Wayne twp	6.37	
Crawfordsville city	2.80	
New Ross corp	.51	
Waynetown corp	.57	
		49.83

Morgan county:

Jackson twp	6.17	
Washington twp	5.80	
Martinsville corp	.58	
		12.55

Newton county:

Jefferson twp	1.43	
Lincoln twp	6.72	
McClellan twp	2.49	
Beaver twp	6.49	
Washington twp	2.93	
Iroquois twp	10.83	
Grant twp	7.19	
Morocco twp	.92	
Brook twp	.45	
Goodland twp	1.01	
Colfax twp	3.82	
Jackson twp	6.02	
		50.30

Orange county:

No. East twp	4.06	
Orleans twp	8.06	
Paoli twp	6.75	
French Lick twp	6.20	
Orleans corp	.87	
Paoli corp	1.35	
		27.29

Owen county:

Wayne twp	5.00	
Harrison twp	3.72	
Taylor twp	2.12	
Gosport corp	.35	
		11.19

Parke county:

Florida twp.	10.45	
Jackson twp.	1.07	
Green twp.	5.96	
Washingtown twp.	6.43	
Penn twp.	3.41	
Reserve twp.	10.65	
Wabash twp.	6.80	
Liberty twp.	6.81	
Rosedale corp.	.61	
		52.19

151 Porter county:

Pleasant twp.	3.22	
Pine twp.	4.76	
Portage twp.	4.19	
Wt. Chester twp.	8.09	
		20.26

Posey county:

Bethel twp.	5.91	
Robert twp.	10.35	
Smith twp.	4.38	
Harmony twp.	3.45	
Poseyville corp.	.38	
New Harmony corp.	.36	
		24.83

Pulaski county:

Salem twp.	5.42	
White Post twp.	5.99	
Cass twp.	6.04	
Francisville corp.	.50	
		17.95

Putnam county:

Jackson twp.	5.62	
Franklin twp.	11.42	
Russell twp.	6.01	
Floyd twp.	2.17	
Marion twp.	4.00	
Greencastle twp.	13.89	
Madison twp.	6.43	
Cloverdale twp.	5.44	
Warren twp.	6.54	
Monroe twp.	6.10	
Cloverdale corp.	.40	
Bainbridge corp.	.18	
Roachdale corp.	.29	
Greencastle city	.44	
		68.93

Randolph county:		
Wayne twp	4.06	
White River twp	9.19	
Monroe twp	5.46	
Greensburg twp	6.91	
Washington twp	5.12	
West River twp	5.54	
Farmland corp	.28	
Parker city	.82	
Winchester corp	1.01	
Union City corp	1.04	
Lynn corp	.76	
Bronson corp	.27	
Nettle Creek twp	5.05	
		45.51
Ripley county:		
Adams twp	8.18	
Laughrey twp	.58	
Batesville corp	1.00	
		9.76
Rush county:		
Ripley twp	5.65	
Posey township	1.84	
Jackson twp	2.80	
Rushville twp	7.16	
Anderson twp	6.07	
Carthage corp	1.40	
Rushville city	.63	
		25.55
Sullivan county:		
Cass twp	2.37	
Hamilton twp	8.22	
Gill twp	10.25	
		20.84
Shelby county:		
Noble twp	1.08	
Liberty twp	4.05	
Shelby twp	2.26	
152 Addison twp	5.16	
Brandywine twp	5.18	
Sugar Creek twp	6.39	
Moral twp	3.76	
Shelbyville corp	.60	
		28.48
Starke county:		
Railroad twp	5.73	
		5.73

St. Joseph county:

Harris twp.	4.18	
Clay twp.	4.59	
So. Bend city	1.47	
		10.24

Tippecanoe county:

Lauramie twp.	6.63	
Sheffield twp.	2.79	
Wea twp.	7.42	
Fairfield twp.	5.00	
Randolph twp.	5.90	
Union twp.	5.41	
Tippecanoe twp.	5.86	
Battle Ground twp.	.77	
Clark Hill corp.	.65	
Lafayette city	4.29	
		44.72

Union county:

Center twp.	3.90	
Harrison twp.	5.00	
		8.90

Vanderburg county:

Armstrong twp.	4.07	
Germantown twp.	4.97	
Center twp.	1.93	
Pigeon twp.	.78	
Evansville city	1.14	
		12.89

Vermilion county:

Holt twp.	18.13	
Highland twp.	11.06	
Eugene twp.	6.09	
Vermilion twp.	6.73	
Clinton twp.	2.06	
Cayuga corp.	.98	
Newport city	.24	
Clinton city	.68	
		45.97

Vigo county:

Nevins twp.	10.94	
Otter Creek twp.	8.12	
Harrison twp.	3.62	
Sugar Creek twp.	4.91	
Fayette township	2.92	
Terre Haute city	1.33	
		31.84

	Wabash county:		
	Pleasant twp.	3.17	
	Chester township	7.04	
	La Gra twp.	5.34	
	Noble twp.	5.04	
	Waltz twp.	.35	
	Liberty township	7.09	
	No. Manchester corp.	.58	
	Wabash city	2.76	
			31.37
	Warren county:		
	Pike twp.	2.06	
	Steuben twp.	4.08	
	Jordan twp.	2.08	
	Adams twp.	6.02	
	Warren twp.	6.73	
	Washington twp.	.41	
	Mound twp.	4.97	
			26.35
	Washington county:		
	Polk twp.	3.10	
	Pierce twp.	3.58	
153	Washington twp.	13.34	
	Vernon twp.	2.65	
	Brown twp.	1.61	
	Saltillo twp.	1.28	
	Salem corp.	.96	
	Campbellsburg corp.	1.14	
			27.66
	Wayne county:		
	Jefferson twp.	2.12	
	Jackson twp.	4.88	
	Washington twp.	5.79	
	Milton corp.	.50	
	Hagerstown corp.	.18	
	Cambridge city	.86	
	Boston twp.	4.10	
	Wayne twp.	3.80	
	Richmond city	1.30	
			23.53
	White county:		
	Prairie twp.	5.63	
	Big Creek twp.	6.06	
	Honey Creek twp.	7.51	
	Monon twp.	14.37	
	Union	4.41	
	Brookston corp.	.50	
	Reynolds corp.	.74	
	Monon corp.	1.21	
	Monticello corp.	1.58	
			42.01

154 That the statements of said report were and are true in substance and in fact.

That pursuant to the provisions of the statutes of Indiana in that behalf the State board of tax commissioners of the State of Indiana convened in regular annual session on the 8th day of July, 1901, and continued in session until this — day of August, 1901, and must adjourn on or before the 22d day of August, 1901; and that upon the convening of said board the auditor of State of Indiana laid before said board the said report of said American Express Company and said board while so in session, assuming and pretending to be so authorized to do by the statutes of the State of Indiana and especially of the statute of said State of March 6th, 1893, the title of which is hereinbefore set out, assumed to make and gave out to your orator and said American Express Company and to the general public that it, said board had made, a preliminary valuation and assessment for the year 1901 of the property of said American Express Company in the State of Indiana, other than the tangible physical property which is valued and assessed for purposes of taxation by the township assessors and other local taxing officers of said State of Indiana pursuant to the provisions of the statute of said State, approved March 6th, 1891, and entitled "An act concerning taxation, repealing all laws in conflict therewith and declaring an emergency;" that said preliminary assessment was $450.00 per mile of the 1848.45 miles of lines or routes of said American Express Company in the State of Indiana.

That before making said preliminary assessment said board had heard and received no testimony or evidence touching the value of said property of said American Express Company so as aforesaid assumed to be assessed by said board except that furnished by

155 and contained in the said report of said American Express Company except as hereinafter stated.

That on the 20th day of August, 1901, the said American Express Company by its counsel, appeared before said board of tax commissioners then sitting in open session to hear the matter and presented to said board the protest hereinafter mentioned.

That the said American Express Company by its counsel then and there stated that the situation as to the American Express Company's property not used in its express business and physically located outside of the State of Indiana, was on April 1, 1901, substantially the same as it was on April 1, 1898, except that some of the securities were of somewhat greater market and actual value. That said board then and there asked of said counsel whether the American Express Company's ocean mileage and mileage foreign to the United States was included in the total mileage of 163,000 miles shown by its report and whether that business was done by that express company's own messengers and agents and said counsel informed the board that such mileage was included and that as they were informed and believed since some time in 1897 said ocean and foreign business was done in substantially the same manner

and by the same kind of agents and messengers as the company's business in the United States was and is done.

That the said report, filed by the American Express Company and said counsel's statement in connection therewith hereinabove alleged, constituted all the evidence before said board bearing upon the matter of the assessment to be made by said board against said company and upon that evidence and none other said board on the 27th day of July, 1901, by its preliminary assessment valued the property of said company in Indiana, exclusive of its tangible personal property actually located in that State on April 1, 1901, at $450.00
156 per mile for each of the 1848.45 miles of its routes in the State of Indiana although said board knew on and before said 27th day of July, 1901, that this court in this cause No. 9620 had in 1898 restrained the certification by the auditor of state of the State of Indiana of taxes against said company on the same property assessed by said board in 1898, in the same amount per mile and assessed upon substantially the same showing of fact, and that said restraining order was then still in force; that in arriving at said value the board pursued the same process or method of computation pursued by it in 1898 and shown in the original bill of complaint herein.

That thereafter on the 20th day of August, 1901, said American Express Company filed with said board its protest against said preliminary assessment which was in writing as follows:

To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1901, of the property of this company in the State of Indiana other*n* than its tangible property which is assessed for taxation by the local taxing officers of said State, Your assessment hereby protested against is $450. per mile of the 1848.45 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto:

157 (2.) Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 of the constitution of the State of Indiana and of section 23 of article 1 of the constitution of the State of Indiana.

(3.) Because the method of procedure adopted by your honorable body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the

constitution of the State of Indiana, and is in derogation of the rights privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana.

(4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation.

(5.) Because since the 1st day of January, 1901, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1898, duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body:

(6.) Because the valuation and assessment as made by the local taxing officers in 1898, in the State of Indiana of this company's property in that State, from which no appeal has been taken,
158 is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana.

(7.) Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1900, pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1st, 1901, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana.

(8.) Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 164019.85 miles (of these about 34,957 miles are in this country and the remainder is made up of water routes, railroad and other routes and lines outside of this country); that by its said report this company is shown to have had on April 1st, 1900, a capital of the face value of $18,000,000.00 then worth on the market 150 cents on the dollar or $27,000,000.00 and no more; that by its said report this company is shown to have had on said April 1st, 1900, real estate without the State of Indiana not used in its express business which was valued for taxation at $1,171,200. and to have had on said last named date in the State of New York and subject to the jurisdiction of the State of New York for taxation purposes personal property consisting of bonds, stocks, mortgage notes and other like securities
159 of the market value of $19,259,933.53 and that it then had in Indiana 1798.34 miles of lines or routes and that this

company's property in the State of Indiana valued and assessed by the local taxing officers in 1901, was assessed for taxation purposes at $17,455.

And this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1898, other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be:

(*a.*) In excess of $118.00 per mile even if its said personal property of the value of $19,259,933.53, outside of Indiana and not used in its express business be included in arriving at said value: and

(*b.*) If the value of said personal property outside of Indiana and not used in this company's express business be, as it should be excluded could not be in excess of $24. per mile; and

(*c.*) If the mileage other than water and foreign routes be taken as the total mileage and said $19,259,933.53, of value of personal property, outside of Indiana and not used in this company's express business be excluded, as it should be excluded, could not be in excess of $138.00 per mile.

Wherefore the American Express Company respectfully asks your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1901, of $450. per mile upon said 1848.45 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board
160 reduce such assessment to an sum not in excess of $25.00 per mile for said 1848.45 miles of its lines or routes in the State of Indiana and that this protest be received, filed and considered by your honorable body.

Respectfully submitted,

BAKER AND DANIELS,
Attorneys for American Ex. Co.

Indianapolis, Indiana, August 20, 1901.

Your orator further avers that neither said auditor of State nor said board nor any other officer of the State of Indiana ever made any objection to said report or to any item, statement or part thereof so filed by said American Express Company, but that said auditor received and accepted the same as filed and laid the same before said board as above stated; that neither said auditor or said board nor any other officer of the State of Indiana ever requested your orator or his said company to furnish him or it any other or further information respecting said company's property and routes.

That all of the matters and facts stated and set forth in said written protest above copied and set out are true in substance and in fact and your orator now here alleges their truth as allegations or charges herein and asks that they be so considered by the court

with the same effect as though now here repeated as independent allegations of fact herein.

Your orator further alleges that the amount of the State, county and other taxes which will be certified by said auditor of State to the auditors of the several counties of the State of Indiana, in which said company has lines and routes if said assessment shall be made final and shall stand, payable by said company, for the year 1901, will be over $14,000.00, all of which is in controversy and dispute in this suit; that the said State board of tax com-
161 missioners, as your orator has good reason to believe and does believe, will make its said preliminary assessment and valuation against said company final and will before it adjourns, viz: before August 31st, 1901, certify said final assessment to said auditor of State; that said auditor will forthwith, as your orator has good reason to believe and does believe, if he is not restrained from so doing, apportion said valuation and assessment to the county auditors for distribution among the several counties, townships and towns, under the provisions of said act of March 6th, 1893, and forthwith certify such apportionment to the several county auditors of said counties unless he shall be restrained by the order of this court. That an emergency exists for the granting of a restraining order against the certification by said auditor of State of said valuation and assessment to the said county auditors.

Your orator further alleges that the certification of said assessment by said defendant to the several county auditors will work an irreparable and lasting injury to said American Express Company and to your orator as president and shareholder therein and to each and all of the holders of shares or interests in its capital for whose benefit your orator as herein stated as well as for his own and said company's benefit, brings and filed this his supplemental bill as he brought the original bill of complaint.

That the said act of certifying said assessment and apportionment by the defendant as said State auditor to the said several county auditors so about to be done by said defendant would be and is without authority of law and in violation of law in this, towit:

(1.) That said pretended statute of March 6th, 1893, the title of which is hereinabove quoted, is invalid and void because
162 in respect of express companies and especially of the said American Express Company, it amends a statute, namely, said act of March 6th, 1891, the title of which is hereinabove quoted, which amended act was itself unconstitutional and void in that it violated section 8 of article 1 of the Constitution of the United States by attempting to regulate inter-state commerce as conducted by the class of common carriers designated in said amended act as express companies.

(2.) That said pretended statute of March 6th, 1893, under which said preliminary assessment, which is about to be made final-apportioned and certified to the county auditors as aforesaid, was made, is in violation of article 1, sections 21 and 23 of the constitution of Indiana and section 1 of the 14th amendment to the

Constitution of the United States in that by said pretended statute the respective shareholders of said The American Express Company, your orator and said company, are deprived of their property without due process of law.

(3.) That the said mode of procedure adopted and followed by said State board under said act of March 6th, 1893, in assessing the property of said The American Express Company in the year 1901 other than its tangible property, deprives the said American Express Company and each of its shareholders and especially your orator of its and their property without due process of law and in violation of the provisions of the Constitution of the United States and of the constitution of the State of Indiana in that behalf in that it assesses for taxation purposes in Indiana personal property of said American Express Company owned and held by it in the city of New York and State of New York, consisting of bonds, stocks, mortgage notes and other like securities, no part of which property is now or ever has been used by said company in connection with its express business in Indiana or elsewhere, and no part of which is or has
163 ever been a part of or connected with the plant of said company as an express company.

(4.) That said pretended statute of March 6, 1893, is in violation of section 1 of the 14th amendment to the Constitution of the United States in that by said statute the said American Express Company and each of its shareholders and especially your orator, are respectively denied the equal protection of the laws.

(5.) That the said mode of procedure adopted and followed by said State board under said act of March 6, 1893, in assessing the property of said American Express Company in the year 1901 other than its tangible property in Indiana, denies to the said company and to each of its shareholders and especially to your orator the equal protection of the laws.

(6.) That by the method of procedure adopted and followed by said State board in assessing in 1901, said express company's property, and especially by its construing said act of 1893, to require that only the railroad mileage in the United States of the lines or routes operated by said company should be considered by said board as constituting the total mileage mentioned in said act, and thereby excluding all of the water routes and foreign routes operated by said company, the said company, its several shareholders and especially your orator are deprived of their property without due process of law and are denied the equal protection of the law in violation of the provisions of the Constitution of the United States guaranteeing said respective rights.

(7.) That said pretended statute of March 6, 1893, and said pretended preliminary assessment and valuation of the property of said American Express Company of said State board in 1901, if the same shall be made final and shall stand, are in contravention of section 1 of the 14th amendment to the Constitution of
164 the United States and of section 8 of article 1 and of section 10 of article 1 of the Constitution of the United States respectively.

(8.) That by the method of procedure adopted by said State board in assessing in 1901 the property of said American Express Company in the State of Indiana, exclusive of its property by law required to be assessed by local taxing officers, said board has in making the said assessment against said American Express Company valued and assessed for taxation in said State of Indiana personal property of said company owned and held by said company and physically situate in the city of New York in the State of New York and not used by it in connection with its express business and forming no part of its express business plant and thereby when said assessment shall be made final the said company, its several shareholders and especially your orator, will be deprived of their property without due process of law and will be denied the equal protection of the laws in contravention of the provisions of the Constitution of the United States guaranteeing said rights respectively.

Your orator further charges that the aggregate of the State, county and township taxes for 1901 in the county in this State where the aggregate levy is the smallest is in excess of 150 cents upon each $100.00 of assessed valuation and such aggregate in the county in this State where said aggregate is the highest is more than 300 cents upon each $100.00 of assessed valuation.

That said express company has paid all taxes levied and assessed upon and against its tangible property by the local taxing officers in the several counties where its lines are for the year 1901, so far as the same are due and is ready and willing to pay as the same shall mature all such taxes so as assessed for the year 1901, and
164½ said American Express Company is ready and willing to, and your orator for it and in his own behalf now offers so to do to bring into this court for payment by the court's direction unto the proper State and county officers any and all taxes of whatsoever kind that have been levied or are leviable against said company in Indiana, except taxes levied and assessed against said company in the State of Indiana by the State board of tax commissioners in the years 1898, 1899 and 1900; and your orator for said express company and in his own behalf is ready and willing to pay and now offers to secure the payment of all or such part of said last mentioned taxes to the approval of this court, that the court may upon final hearing of this cause find should be paid by said express company.

Your orator further alleges that said American Express Company is, and for many years last past has been, the owner of real estate situate in Marion county and State of Indiana, being the real estate mentioned in its said report filed in 1901, in the office of the auditor of state of the State of Indiana; that the said pretended assessment so made in 1901, and about to be made final, by the said State board, will cast a cloud upon its title to said real estate; that said express company has, and for many years last past has had, express lines or routes in and through said Marion county, and 57 other counties in Indiana and that actions or suits in each of said several counties to enforce the collection of said pretended taxes so as afore-

said about to be certified to the auditors of said counties against said American Express Company or actions to restrain and enjoin the enforcement and collection of said alleged and pretended taxes would necessarily involve large expense and outlay of time and money to the State of Indiana and to the cities and towns in which said express lines and routes are and to said American Express
165 Company and its shareholders by reason of the multiplicity of suits and that such multiplicity of suits is avoided by this suit.

In consideration whereof and forasmuch as your orator can only have adequate relief in the premises in this honorable court, where matters of this nature are properly cognizable and relievable, to the end therefore that the defendant against whom process is hereinafter prayed, if he can, show why your orator should not have the relief hereby prayed, and that he the said defendant, may but not under oath, oath being hereby waived, to the best and utmost of his knowledge, remembrance, information and belief, full, true, direct and perfect answer make, to all and singular the matters and things hereinbefore set forth and alleged, as fully and completely as if the same were here repeated, and he, the said defendant, thereunto severally and specifically interrogated paragraph by paragraph; and that a temporary injunction may forthwith issue herein, without notice, against the defendant William H. Hart, as auditor of state of the State of Indiana enjoining and restraining him from certifying to each or any or all of the auditors of the respective counties in Indiana where said American Express Company has express lines or routes, valuations, assessments and taxes made and levied by said State board against said American Express Company in the year 1901 or any part of such valuations, assessments and taxes until a hearing can be had herein and that upon the final hearing of this cause said defendant be perpetually enjoined from certifying valuations, assessments and taxes made, levied and assessed by said State board against said American Express Company in and for the year 1901, and that the cloud cast upon the property of said American Express Company in Indiana by reason of said pretended assessment of said State board in 1901 and the lien thereby attempted to be created upon its property, real and
166 personal, in Indiana, be removed: that said taxes, valuations and assessments be respectively declared invalid and void, and that there be granted unto your orator all other proper relief in the premises.

And may it please your honors to grant unto your orator the writ of subpœna of the United States of America, issuing out of and under the seal of this honorable court, directed to the said defendant, William H. Hart, as auditor of state of the State of Indiana, commanding him at the proper time, and under the proper penalty, both to be named therein, to be and appear in this honorable court, then and there to answer, all and singular the matters and things hereinbefore stated and charged, and stand to, perform and abide

such further order, direction and decree as may be made against him.

And your orator, as in duty bound, will ever pray, etc.

JAMES C. FARGO,
As President of the American Express Company,
By BAKER & DANIELS,
His Solicitors.

CARTER AND LEDYARD,
BAKER AND DANIELS,
Of Counsel.

UNITED STATES OF AMERICA, }
District of Indiana, } *ss:*

R. D. Hughes being duly sworn on his oath says he is general superintendent of the American Express Company mentioned in the foregoing bill of complaint and the same person who signed the tax reports of that company filed with the auditor of state of the State of Indiana in the year —, as in said bill of complaint mentioned; that he is authorized to and does sign this affidavit in behalf of
167 the complainant in said cause; that he has read the foregoing bill of complaint and knows its contents and that the matters and facts therein stated are true as he is informed and verily believes.

—— ——.

Subscribed and sworn to this — day of ——.

—— ——,
Clerk U. S. Circuit Court, District of Indiana.

And now the defendant William H. Hart by his said solicitor enters his appearance herein to each said supplemental bills or bills in the nature of supplemental bills.

168 And afterwards, to wit, at the May term of said court, on the 12th day of September, 1901, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

It is ordered by the court that the defendant's time for the taking of its testimony in the above entitled cause is hereby limited to the period of sixty days, commencing on October 20, 1901, and ending December 20, 1901.

And afterwards, to wit, at the May term of said court, on the 11th day of June, 1902, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Comes now the defendant by W. L. Taylor, Esq., his solicitor, and files his motion to require the complainant to file an injunction bond herein, in the words following, to wit:

Comes now William H. Hart, as auditor of the State of Indiana,

defendant herein, and shows to the court that, by the plaintiff's original bill it appears that the taxes in dispute herein, at the time the original bill was filed, amounted to over $14,000, and that by the three supplemental bills filed herein in 1899, 1900 and 1901 respectively, it appears that the taxes in dispute herein for each of the years subsequent to 1898, amounted, at the time of the filing of said supplemental bills, to over $14,000. in and for each year; and this defendant shows to the court that the taxes for the year 1902 in dispute upon the grounds set forth in said original and supplemental bills, amount to the sum of over $14,000; and this defendant shows to the court that, by the terms of the original bill herein, it appears that, at the time of the filing of said bill, the total amount of tangible property possessed by the complainant in the State of Indiana amounted to $16,015., of which amount less than $10,000 was in real estate, all of which real
169 estate was situated in the city of Indianapolis, Marion county, Indiana; and this defendant further shows that, by the supplemental bills of complaint filed herein, it appears that the complainant now possesses in the State of Indiana no more real or personal property than it had at the time of the institution of this litigation; and this defendant shows that, notwithstanding the amount in dispute between the complainant and defendant is in the neighborhood at this time of $75,000, and the complainant possesses not to exceed $16,015 of tangible property in the State of Indiana, all of which, excepting real estate, of the value of less than $10,000 is readily susceptible of being removed from the State, and an injunction has been granted to the complainant restraining the defendant from certifying down taxes to the amount above stated, this court has, nevertheless, not required of the complainant an injunction bond conditioned upon the payment by complainant to defendant of all costs and damages that may accrue to the defendant or to the State of Indiana or to any municipal subdivision or taxing community of said State officially represented by the defendant, in the event it should appear upon a final hearing herein that such injunction had been improperly issued;

Wherefore, the defendant moves the court that the complainant be required to file with the court, to the approval of the court, his penal bond in the sum of not less than $100,000. conditioned upon the payment to the defendant, for and on behalf of the State of Indiana and each and every municipal subdivision and taxing community in the State of Indiana represented by the defendant in this action, of all costs and damages, and to the State of Indiana and to each municipal subdivision and taxing community in such State represented by the defendant in his official capacity as auditor of State of all costs and damages, including as damages all
170 taxes which may be decided to be rightfully recoverable by the State of Indiana and its said municipal subdivisions from the complainant, in the event it shall appear upon final hearing herein that the injunction herein shall have been improperly issued.

STATE OF INDIANA, } ss:
County of Marion, }

William H. Hart, being duly sworn, says that he is auditor of state of the State of Indiana, and defendant in the above entitled action, and that he has read over the foregoing matters, and that the matters of fact charged therein are true, as he is informed and verily believes.

WILLIAM H. HART.

Subscribed and sworn to before me this 11th day of June, 1902.

FROST KING,
Notary Public.

Com. expires September 2, 1902.

171 And afterwards towit, at the May term of said court, on the 16th day of June, 1902, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Comes now the defendant by W. L. Taylor, Esq., his solicitor, and files his demurrer to the second and third supplemental bills of complain herein, separately, in the words following, towit:

Demurrer of the defendant, William H. Hart, auditor of state of the State of Indiana, to the second and third supplemental bills of complaint herein, separately.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in said second or third supplemental bill- of complaint contained, to be true in such manner and form as the same are therein set forth and alleged, demurs to each of the said second and third supplemental bills of complaint separately; and for cause of demurrer says:

1. That enough does not appear upon the face of either of said second or third supplemental bills of complaint to show that the court has jurisdiction of this suit in consequence of the want of the proper and necessary averment of citizenship of the parties;

2. That a compliance has not been made in said second or third supplemental bills of complaint, or either of them, with the requisites of rule 20 of the equity rules of this court, in this, that it is not stated that one of the partners of said complainant is not, and at the time of bringing said second and third supplemental bills of complaint, or either of them, was not, a resident of the State of Indiana; that neither said second or third supplemental bill- of complaint alleges that at the time of the filing thereof, or either of them, all of said co-partners owning interests in said American

172 Express Company, were non-residents of the State of Indiana;

3. That said complainant has not, by his said second or third supplemental bills of complaint, made or stated such a cause as does or ought to entitle him, or any of his co-partners, to any

relief as is sought or prayed in either of said bills from or against this defendant;

4. That neither said second nor third supplemental bills of complaint, shows on its face that the action is one arising under the Constitution or laws of the United States.

5. That both said second and third supplemental bills of complaint, and each of them, are wholly without equity;

6. That this defendant is neither a necessary nor a proper party defendant to either said second or third supplemental bill of complaint, and that no cause of action is stated against him in either said second or third supplemental bills of complaint entitling the complainant to any part of the relief sought; and the said second and third supplemental bills of complaint should be dismissed.

Wherefore, this defendant demands the judgment of this honorable court whether he shall be compelled to make any further answer to the said second or third supplemental bills of complaint or to any of the matters and things therein contained; and he prays to be dismissed hence with his costs in this behalf sustained; and that the restraining order and temporary injunction in this case heretofore entered be dissolved.

WILLIAM L. TAYLOR,
Attorney General of Indiana,
MERRILL MOORES,
C. C. HADLEY,
Solicitors for Defendant.

I hereby certify that the foregoing demurrer is, in my opinion, well founded in point of law.

WM. L. TAYLOR,
Attorney General of Indiana, Solicitor for Defendant.

173 STATE OF INDIANA, } ss:
Marion County, }

William H. Hart, being duly sworn, on oath says that he is auditor of state of the State of Indiana, the above named defendant, and that the foregoing demurrer is not introduced for delay.

WILLIAM H. HART,
Auditor of State of the State of Indiana.

Subscribed and sworn to before me, a notary public in and for said county and State, this 14 day of June, 1902.

FROST KING,
Notary Public.

Com. expires September 2, 1902.

And now come the parties by their respective solicitors, and thereupon the court having heard the argument of counsel, and being sufficiently advised in the premises, doth now overrule the demurrer to the second and third supplemental bills of complaint herein.

And at the same time comes the defendant by counsel and files his answer herein, in the words following towit:

Answer of William H. Hart, as auditor of state of the State of Indiana (successor to Americus C. Daily, auditor of state of the State of Indiana), to the second and third supplemental bills of complaint of James C. Fargo, as president of the American Express Company.

Comes now William H. Hart, as auditor of state of the State of Indiana, successor to Americus C. Daily, auditor of state of the State of Indiana, and for answer to the second and third supplemental bills of complaint herein, says:

He admits that James C. Fargo is president of the American Express Company and a resident citizen of the State of New York, and that said Americus C. Daily, as auditor of State, and this defendant were and are residents and citizens of Indiana during all the times mentioned in the said bill and supplemental bills.

174 He admits that said Fargo was and is a share holder of the American Express Company, but says that said express company was during all the times mentioned in the said bill and supplemental bills and now is and always has been a partnership.

This defendant admits that the principal place of business of said partnership company is located at New York city, State of New York, and that its meetings are held and its books are kept in the city of New York and State of New York; but it is not informed as to where its bonds, stocks and mortgages, and securities generally, are kept, held or owned.

He admits that said company is composed of many members or co-partners, who own 180,000 equal shares or interests in said express company, such shares or interests represented by certificates having a market value of not less than $100 per share each.

Defendant says that said members are partners, and some of them were at the time of the filing of said bill, and ever since then have been, and now are, residents and citizens of the State of Indiana.

This defendant admits that said partners are widely scattered and live in fifteen or more States of the United States, as stated in the bill, and that some of them are beyond seas; but he denies that said president, or any member or partner of said company, has any right in his own behalf, or on behalf of said company, to represent the other partners of said company, or to bring this suit and file said bill or either of said supplemental bills of complaint herein, for or on behalf of any other of said partners than himself, and particularly the partners who are citizens and residents of the State of Indiana.

175 This defendant admits that said express company is and for many years last past has been conducting the express business on railways, steamboats, &c., and that it has been so conducting such business in the State of Indiana in transporting money, bonds, securities, &c., through and into the State from and to other States of the United States, and is so conducting said business now;

that it neither owns nor operates railroads or steamboats, but does business on railroads substantially as stated in the bill.

Defendant admits the passage by the General Assembly of the State of Indiana of the act referred to in the bill, as stated, as well as the filing of the report by said express company, as copied in the bill and supplemental —.

Defendant admits the making of the assessment by the State board of tax commissioners of Indiana in 1898 and 1899, 1900 and 1901 substantially as stated in the said bill and supplemental bills of complaint.

Defendant admits the filing of the protests copied in the said bill and supplemental bill- of complaint, as averred.

This defendant is not informed whether any objection was made to the said reports of the said complainant, or to any request by any officer of the State of Indiana for further information, even if the same were at all material to any issue in this case, as stated in the bill or supplemental bills, which defendant denies.

This defendant is informed and believes, and therefore charges the fact to be, that the Adams Express Company and the United States Express Company are engaged in a similar business, and for a number of years have accepted consignments of freight and express matter to substantially the same domestic and foreign countries as the American Express Company does and has done; that the Adams
176 Express Company has returned to this defendant as auditor of State of Indiana, for the year 1896, as its total length of lines in miles, 27,300; for the year 1897, 29,940; for the year 1898, 29,940; for the year 1899, 29,845; and for the year 1900, 29,468 and for the year 1901 —; that the American Express Company has returned, as its total length of lines in miles, for the year 1896, 34,220; for the year 1897, 34,957; for the year 1898, 163,063; for the year 1899, 163,021; and for the year 1900, 162,619 miles and for the year 1901 —; that the United States Express Company has returned as its total length of lines in miles for the year 1896, 29,813.17; for the year 1897, 27,786.83; for the year 1898, 151,580; for the year 1899, 151,516.59; and for the year 1900, 151,590.59 miles, and for the year 1901 —.

Defendant says that during the five years named the said three companies named have transacted precisely a similar business, doing business in each of said years in precisely the same way and shipping freight and express matter to foreign points throughout the world, to substantially the same places and in the same manner as at present, and that the total mileage of the three companies named and their facilities for doing business at home and abroad has not been materially altered during the years above named.

Defendant is informed and believes and so states the fact to be that it is the custom of all three of the said companies to consign expressage to foreign countries on freight on fast steamers, such expressage being delivered by such steamers at London, Berlin, Paris and possibly a few other large cities in foreign countries, to agents of the express companies which contract for the shipment; but that

in England all such express matter not delivered directly to the London agent of the express companies is delivered by other carriers who are engaged in the transfer and express business in Great Britain and Ireland, and is forwarded to its destination by
177 such other carriers under contract with the original express company making the shipment.

In the German Empire similar arrangements are made with the local carriers, who forward the same through the German Empire; and in France and other European and foreign countries similar arrangements are made with other local carriers engaged in the fast freight or express business for forwarding freight and express matter; that said forwarding express companies are paid therefor by said American Express Company for such forwarding. That outside of a few large cities no one of said three American express companies named has any employees directly in its pay, engaged in the express business, nor does it through its own servants or employés forward or deliver freight or express matter. That no where outside of the United States does the complainant maintain any express lines or routes, but instead of maintaining and operating such lines and routes the complainant forwards its freight and expressage outside of the United States wholly by and through other express carriers engaged in a similar business, who accept and forward and deliver freight and expressage matter from complainant, for hire.

Defendant is further informed and believes that complainant does not pay any taxes upon this foreign mileage throughout the world, and that the enormous increase in mileage for 1898, 1899, 1900 and 1901, as shown in said bill and supplemental bill, and reported to said State board of tax commissioners of the State of Indiana, was made and stated for the purpose of avoiding the payment of taxes justly due to the State of Indiana, and to the other States in the Union, and that no part of said increased mileage will be taxed in any country of the world, or in any other of the States of the United States, and that there has been no such increase in mileage as stated in the said bill and supplemental bill, and that the same is
178 made for the purpose of avoiding the payment of taxes justly due, not only to the State of Indiana, but to other States of the United States of America.

Defendant further says that he is not informed whether complainant and his associates possess real estate in New York, Illinois, Massachusetts and other States, as stated in the bill, amounting to $3,000,000, or that they own and possess stocks and bonds and moneys of the value of over $15,000,000, as stated in the bill and supplemental bills of complaint, or of the value of the personal property, such as horses, wagons, harness, &c., throughout the United States.

But this defendant says that all of said real estate was reported to the State board of tax commissioners of Indiana, of which defendant is a member, and was considered in assessing the value of the American Express Company's taxable property in the State of Indiana, for the years stated in the bill and supplemental bills of complaint.

Defendant further says that he is informed and believes that if the American Express Company possessed stocks and bonds of corporations and companies, bills receivable, mortgage bonds and moneys loaned on collateral, as stated in the bill and supplemental bills, the same was held, employed and used by said complainant for the purpose of transacting its express business, and that such personal property and securities were necessarily and properly used and employed in maintaining and continuing said business.

That said express company transmits daily in the regular course of its business millions of dollars in money, for the loss of all, or any part of which, its members and partners are individually liable; that it has contracts with railroad companies and other car-
179 riers calling for payments from day to day of large amounts of money; that it does a very large business in shipping bonded freight and express matter under bond to the United States Government from seaports to ports of entry in the interior of the United States, and to foreign points; for all of which freight and express matter, and the proper delivery and accounting for the same at the custom houses in interior parts of the United States and other parts of North America, the American Express Company is required by the United States Government and by railroad companies with whom it has contracts, to give bonds; such bonds being for very large amounts, and requiring to be constantly given and renewed.

That by reason of the individual liability of the copartners, transacting business as the American Express Company, it will be impossible to transact the business of such company, or any extensive express business in the United States, or elsewhere, unless such copartnership have and maintain constantly either ready money in large amounts, or securities readily convertible into cash; such holdings with the ability to pay losses and give bonds and meet cash payments to such carriers.

That said fifteen and a half million dollars in securities is held and used by the American Express Company as a part of the necessary capital of its business, and is employed in the management of said business, and is essential to its profitable continuance.

That so much of said capital as is invested in securities of the kind named in said bill and supplemental bills is used and employed not only in and for the city and State of New York, but generally in tha management and conduct of the business of said co-partnership, and that such securities form a part of its capital and business, and are in constant use wherever said company does business, both in the State of Indiana and elsewhere
180 throughout the United States.

Defendant says that for the year 1898 the American Express Company returned to the comptroller of the State of New York, as the capital employed in New York State, $2,916,000, of which $1,405,985, was invested in real estate.

Defendant further states that the American Express Company returned to the comptroller of the State of New York, for the year 1898, the sum of $1,748,700.61, as its gross earnings in the State of

New York, upon which sum the company was liable to the State for a tax upon gross earnings; and defendant states that the American Express Company made no return to the State of New York, or to the county of New York, or to the city of New York, in which said company maintains its headquarters and home offices, for the year 1898, of any personal property of any description, and that the name of the American Express Company or of the plaintiff, as president of the American Express Company, does not appear upon the tax duplicates of the county or city of New York for the year 1898, as assessed for taxation upon any personal property of any description whatever.

Defendant states that no returns of personal property of any description have been made to the State, county or city of New York for the year 1899, and that neither the name of the American Express Company nor that of James C. Fargo, as president of said company, or as an individual, appears upon the tax duplicates of the county or city of New York for the year 1899 as assessed for any personal property of any description whatever, and that no taxes whatever were assessed or paid in the city or State of New York upon the specific personal property described in the bill or supplemental bills of complaint, and that the refusal of said express company to pay the proportion of taxes due on its property, real
181 and personal, as set forth in the said bill and supplemental bill, is an attempt to evade the payment of taxes justly due the State of Indiana, and accruing upon said property, both real and personal.

Defendant denies that the act of March 6, 1891, as amended, or any of the acts supplemental thereto, as stated in the bill and supplemental bills, are invalid and void, but says that the same are valid and binding.

Defendant denies that the act of March 6, 1893, or said act of — 1901 as stated in the bill and supplemental bills of complaint, is in violation of article 1, sections 21 and 23 of the Constitution of the United States, or of section 1 of the fourteenth amendment to the Constitution of the United States, or any other sections of either the constitution of the State of Indiana, or of the Constitution of the United States; but says that the same *are* constitutional and valid in every particular.

Said defendant denies that said assessments for 1898, 1899, 1900 or 1901 or either of said assessments, as stated in the bill and supplemental bill, deprives the American Express Company, or any of its shareholders of any of its property without due process of law, in violation of any provision of the Constitution of the United States or of the constitution of the State of Indiana, or that it assesses for taxation purposes in Indiana personal property of said American Express Company owned or held by it in the city of New York and State of New York, which was not used by said company in connection with its express business in Indiana, or elsewhere, as stated in said bill and supplemental bill of complaint.

Defendant denies that either the statute of March 6, 1893, or the

said act of — 1901, as stated in said bill and supplemental bills, is in violation of section 1 of the fourteenth amendment to the Constitution of the United States, or that it denies said express company, or any of the co-partners owning the same, the equal protection of the laws.

182 Said defendant further denies that the mode of procedure adopted by the State board of tax commissioners either under the act of March 6, 1893, or said act of — 1901, in assessing the property of the American Express Company, for the year- 1898, 1899, 1900 or 1901, as stated in said bill and supplemental bills of complaint, denies to said company, or to any of its co-partnership members, the equal protection of the laws.

Defendant further denies that the method of procedure adopted and followed by the State board of tax commissioners of Indiana in assessing for the year- 1898, 1899, 1900 or 1901, the property of the said American Express Company, in excluding all foreign routes, is depriving the said company, or any of its co-partnership members, of their property without due process of law, or denying to them the equal protection of the laws, or that the same is in violation of any provision of the Constitution of the United States or of the State of Indiana.

Defendant denies that the so-called preliminary assessment, referred to in the bill and supplemental bills, or the method of procedure of the assessment of property against said express company, for the years 1898, 1899, 1900 or 1901, as stated in said bill and supplemental bills, was in contravention of any section of the Constitution of the United States, or of the State of Indiana. This defendant is not informed of the aggregate levy of the State, county and township taxes for either of the years 1898, 1899, 1900 or 1901 in all parts of the State of Indiana, nor whether said express company has paid all the taxes levied and assessed against its tangible property by the local taxing officers in the several counties where its lines were running during those years, or of its willingness to bring into the court the amount that the court may direct to be paid or levied against said company in Indiana; but this defendant says that the

183 said State board of tax commissioners, during each of said years mentioned in said bill and supplemental bills, assessed the property of said complainant company according to the laws of the State of Indiana, and that each of said assessments was just, fair and lawful. Defendant further says that, while the face or par value of all the shares of stock of the complainant company may aggregate 18 million dollars, yet the actual amount of capital paid in for said 18 million dollars of stock was $5,300,000; that during each of said years 1898, 1899, 1900, the said company paid six per cent. dividend upon said total capitalization, and in the year 1901, it paid eight per cent. dividend upon such gross capitalization; that said shares of capital stock are listed upon the stock exchange, and are sold in the open market from day to day; that on the 1st day of April 1898, the market value, in the open market, of said shares was $125.00 per share; that, on the 1st day of April, 1899, the market

value of such shares was $140.00 per share; that, on the 31st day of March, 1900 (the 1st day of April being Sunday) the market value of such shares was from $149.00 to $151.00 per share; that, on the 1st day of April, 1901, the market value of such shares was $200 to $202.00 per share; that, on the 1st day of April, 1902, the market value of such shares was $225.00 to $233.00, $225 being the bid and $233 being the asked, price; that said prices were the actual cash market prices on the said days named. This defendant further says that he has no authority whatever to collect taxes, or to fix a lien upon either real or personal property; that his duty, as auditor of State, pursuant to statute, in addition to being a member of the State board of tax commissioners of Indiana, is to certify down the assessments made by said State board to the auditors of the respective counties of Indiana, who, in turn, extend such assessments upon the duplicates of their respective counties, after which the
184 duplicates are turned over and delivered to the respective county treasurers throughout the State, who then proceed to the collection of the taxes. And this defendant protests against and denies the right to enjoin him from performing the clerical duty made mandatory by law. He says that great hardship and injustice would result to the tax payers of the counties in this State if this injunction should be made perpetual.

This defendant, further, denies to this court any jurisdiction whatever to hear or to determine any question respecting the amount of the assessment that should be made against the property of the American Express Company for the years 1898, 1899, 1900 or 1901 under the facts stated in the said bill or either of the supplemental bills of complaint, and if any question whatever is presented it is wholly one of *excessive assessment*, and not that the whole tax is illegal and void. And he denies that this court has a right to determine the question, even though the assessment should be *excessive*, which is wholly denied.

Defendant says that this court has no jurisdiction whatever, nor can it assume, rightfully, any jurisdiction over the defendant or the State board of tax commissioners and prevent said board from assessing the property of said express company in the State of Indiana under the facts stated in either the said bill or the supplemental bills of complaint. Nor has this court any jurisdiction whatever to accept the offer of the express company to secure the payment of any or all of the taxes which either the said express company or this court might determine should be due to the State of Indiana and the several counties of the State of Indiana from said express company for taxes upon its property used and occupied within the State of Indiana.

This court has no jurisdiction whatever to hear or de-
185 termine what portion of the assessment, if any, so made by the State board of tax commissioners of Indiana, should be declared illegal and excessive, or to enjoin said so-called illegal or excessive assessments.

This defendant further says that said express company has not

paid to the State of Indiana, nor to any county in the State of Indiana, any taxes whatever assessed by the State board of tax commissioners of Indiana, for either the years 1898, 1899, 1900 or 1901.

All other things not herein admitted are denied as to the facts stated in said bill and supplemental bills of complaint.

WM. L. TAYLOR,
Attorney General of Indiana,
MERRILL MOORES,
C. C. HADLEY,
Solicitors for Defendant.

I hereby certify that, in my opinion the foregoing answer is well founded in point of law.

W. L. TAYLOR,
Attorney General of Indiana, Solicitor for Defendant.

And at the same time comes the complainant by Carter & Ledyard and Baker & Daniels, his solicitors, and files his replication herein in the words following, to wit:

The above named complainant saving and reserving to himself all and all manner of advantages of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the defendant, William H. Hart, auditor of State, for replication thereunto saith that he doth and will aver, maintain and prove his said bill of complaint and supplemental bills of complaint to be true, certain, and sufficient in the law to be answered
186 unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in law to be replied unto by this repliant; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true; all which matters and things this replicant is ready to aver, maintain and prove as this honorable court shall direct and humbly prays as in and by his said bill of complaint and supplemental bills of complaint he hath already prayed.

JAMES C. FARGO,
As President of American Express Company,
By BAKER & DANIELS,
His Solicitors.

CARTER & LEDYARD,
BAKER & DANIELS,
Of Counsel.

And at the same time the complainant by counsel files an injunction bond herein, in the penal sum of $75,000 with the Fidelity & Deposit Company of Maryland as surety, which bond is approved by the court, and is in the words following, to wit:

Know all men by these presents that the undersigned James C. Fargo and the American Express Company as principals and the Fidelity & Deposit Company of Baltimore, Maryland, as surety, are held and bound unto the State of Indiana in the penal sum of $75,000, lawful money of the United States for the payment of which without relief from valuation or appraisement laws well and truly to be made, they bind themselves and their respective successors and assigns jointly and severally firmly by these presents.

Dated and signed this 16th day of June, 1902.

The condition of this obligation is such that whereas the above mentioned James C. Fargo, complainant in said cause, has
187 obtained in the above entitled cause an interlocutory injunction restraining the auditor of state of the State of Indiana from certifying to the respective auditors of the various counties in Indiana wherein said American Express Company does business, the valuations placed by the Indiana State board of tax commissioners on the lines or routes of said express company in Indiana in the years 1898; 1899; 1900 and 1901, and whereas said cause is still undetermined;

Now therefore if by the final decree of said court or upon mandate from the Supreme Court of the United States to the said circuit court, said interlocutory injunction shall be made perpetual; and if said complainant or said express company shall pay the taxes based on said valuations or on such part of said valuations as shall be in said cause decreed to be proper and valid or which the court shall allow to stand undisturbed and as to which the decree shall not be reversed on appeal or otherwise set aside or modified, then and in either such case this bond shall be void and of no effect; otherwise it shall be in full force and effect.

In witness whereof the said James C. Fargo, said American Express Company and said Fidelity & Deposit Company have hereunto set their names this day and year aforesaid.

JAMES C. FARGO,
AMERICAN EXPRESS COMPANY,
By BAKER & DANIELS, *Their Att'ys.*

[Seal of the Fidelity & Deposit Company of Maryland.]

FIDELITY AND DEPOSIT COMPANY OF MARYLAND,
By ALBERT BAKER, *Its Attorney in Fact.*
Attest: HENRY L. MAURY, *General Agent.*

Approved by the court June 16, 1902.

JOHN H. BAKER, *Judge.*

188 And afterwards, to wit, at the May term of said court, on the 23d day of July, 1902, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

This cause having on June 16, 1902, come on to be heard upon the bill of complaint, answers and replications and upon the proofs

adduced after argument of counsel for complainant and for defendant, was on said day taken under advisement by the court;

And now on this 23d day of July, 1902, the court being sufficiently thereunto advised, doth make the following finding
189 and decisions:

1. The act of March 6, 1893 (Acts of 1893, pp. 374–383) is a valid and constitutional enactment, and it is not in conflict with any provisions of the constitution of the State of Indiana or of the United States mentioned in the bill of complaint, or in any of the supplemental bills of complaint, filed herein by the complainant.

2. The question of express route mileage, both within and without the State of Indiana, was and is a question for the exclusive determination of the State board of tax commissioners, and in the absence of fraud, its determination is conclusive and as no charge of fraud is made either in the original or in the supplemental bills, the court cannot retry that question, however erroneous the determination of the board may have been.

3. The question of the value of the express company's route in this State, was and is a question exclusively for the determination of the State board, and its determination cannot be overturned by inquiring whether or not the board gave proper weight and effect to the evidence touching the value of the real and personal property owned by the express company without the State of Indiana. The State board is given jurisdiction to hear and determine these questions, and its determination cannot be set aside in the absence of fraud which is not charged.

4. The court would not be justified by the evidence in finding or imputing fraud or bad faith in the action of the board. The error of the board, if any, was an error of judgment, unmixed with fraud, in making an excessive valuation of the express company's route in this State.

It is thereupon ordered, adjudged and decreed by the court that the complainant's bill of complaint and each of the supplemental bills of complaint herein be and they are now dismissed
190 for want of equity, at complainant's costs.

The court doth further order, adjudge and decree that the temporary restraining order heretofore issued in this cause and extended to cover the tax assessments for the years 1899, 1900 and 1901, shall be continued in force for the period of eighty days from this date, and thereafter until final disposition of the cause on appeal, if, within said period of eighty days, the complainant shall duly perfect its appeal herein by filing herein in this court his petition for appeal and an assignment of errors and giving an appeal bond in the penalty of one hundred thousand dollars with the Fidelity & Deposit Company of Maryland or the American Surety Company as surety thereon; otherwise all of said restraining orders herein shall stand dissolved at the end of said eighty day period.

191 And afterwards, towit, at the May term of said court, on the 6th day of October, 1902, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, towit:

Comes now the complainant by counsel and files his petition for appeal to the Supreme Court of the United States, and his assignment of errors herein, in the words following, towit:

Petition for Appeal to the Supreme Court.

The above named complainant conceiving himself aggrieved by the order and decree made and entered in the above entitled cause on the 23d day of July, 1902, wherein and whereby it was ordered, adjudged and decreed that said complainant's bill of complaint and his several supplemental bills of complaint herein be dismissed for want of equity and that the said complainant pay the costs herein, does hereby appeal from said order and decree of July 23d, 1902, to the Supreme Court of the United States for the reasons specified in the assignment of errors filed herein concurrently herewith; and complainant prays that this appeal may be allowed, and that a transcript of the record, papers and proceedings upon which said order and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

CARTER & LEDYARD AND
BAKER & DANIELS,
Solicitors for Complainant James C. Fargo, as President of the American Express Company, etc.

The foregoing petition on appeal is granted and the claim of appeal therein made is allowed.

Done in open court this 6th day of October, 1902.

JOHN H. BAKER,
District Judge and One of the Judges of said Circuit Court of the United States, Presiding Therein.

192 *Assignment of Errors.*

Comes now the complainant and files the following assignment of errors upon which he will rely in his appeal from the decree made by this honorable court on the 23rd day of July, 1902, in the above entitled cause.

There is manifest error in the proceedings and decree of the circuit court of the United States for the district of Indiana, and in said proceedings and the said decree of dismissal of complainant's bill and supplemental bills in said suit for want of equity and therein the court erred as follows:

I.

In deciding that the act of the General Assembly of the State of Indiana of March 6, 1893, mentioned in the bill of complaint, and in said decree, is a valid and constitutional enactment:

II.

In deciding that the act of the General Assembly of the State of Indiana of March 6, 1893, mentioned in the bill of complaint and in said decree is not in conflict with any provision of the Constitution of the United States mentioned in the bill of complaint or in any of the supplemental bills filed by complainant herein.

193 III.

In deciding that the act of the General Assembly of the State of Indiana of March 6, 1893, mentioned in bill of complaint and in said decree is not in conflict with any provision of the constitution of the State of Indiana mentioned in the bill of complaint or in any of the supplemental bills filed by complainant herein.

IV.

In deciding that the bill of complaint and supplemental bills of complaint contain no charge of fraud in respect of the acts of the Indiana State board of tax commissioners in determining the miles of routes of the American Express Company within and without the State of Indiana for the purposes of the assessment and valuation of the said express company's "mileage" property in Indiana.

V.

In deciding that under the facts alleged in the bill of complaint and in the supplemental bills of complaint and under the facts in evidence and those admitted by the answers and in the stipulations filed, in the absence of an allegation of fraud, the determination of the Indiana State board of tax commissioners of the question of the express route mileage of the American Express Company, both within and without the State of Indiana, is conclusive and that said circuit court could not retry that question.

VI.

In deciding that under the facts alleged in the bill of complaint, and in the supplemental bills of complaint and under the facts in evidence and those admitted by the answers and in stipulations filed, in the absence of an allegation of fraud, the determination by the Indiana State board of tax commissioners, of the lengths of the express route mileage of the American Express Company, within and without the State of Indiana, respectively, is conclusive and that the said circuit court could not retry that question.

VII.

In deciding that in the absence of an allegation of fraud the
194 determination of the Indiana State board of tax commissioners that the "ocean" and "foreign" mileage of the American Express Company should be excluded in arriving at the total mileage of the said company, to be considered under the provisions of

the act of the General Assembly of the State of Indiana of March 6, 1893, mentioned in the bill of complaint and in said decree, was conclusive, and that said circuit court could not retry the question whether such "ocean" and "foreign" mileage should be excluded or included in the total mileage under the provisions of said act.

VIII.

In deciding that in the absence of a charge of fraud the determination by the Indiana State board of tax commissioners of the value of the American Express Company's routes in the State of Indiana cannot be overturned by inquiring whether or not that board gave proper weight and effect to the evidence touching the value of the real and personal property owned by the said express company without the State of Indiana.

IX.

In deciding, that under the averments of the bill of complaint and of the supplemental bills, the proofs, admissions in the answers and in the stipulations filed, that the question of the value of the American Express Company's routes in the State of Indiana was and is a question exclusively for the determination of the Indiana State board of tax commissioners.

X.

In deciding that the bill of complaint and supplemental bills of complaint contained no charge of fraud in respect of the acts of the Indiana State board of tax commissioners in making the assessment and fixing the valuation of the "mileage" property in Indiana of the said American Express Company mentioned in the bill of complaint and in the supplemental bills.

XI.

In deciding that under the evidence the court would not be justified in finding or imputing fraud or bad faith in the action of the Indiana State board of tax commissioners: and that the error
195 of the board, if any, was an error of judgment unmixed with fraud, in making an excessive valuation of the American Express Company's routes in the State of Indiana.

XII.

In not deciding that the act of the General Assembly of the State of Indiana of March 6, 1893, mentioned in the bill of complaint and in said decree was and is invalid and unconstitutional for that:

(*a.*) It is in contravention of section one (1) of the fourteenth amendment to the Constitution of the United States: and

(*b.*) It is in contravention of the 8th section of article 1 of the Constitution of the United States in respect of the power to regulate commerce among the several States:

XIII.

In not deciding that the act of the General Assembly of the State of Indiana of March 6, 1893, mentioned in the bill of complaint and in said decree was and is invalid and unconstitutional for that:

(*a.*) It is in contravention of the 22nd section of article 4 of the constitution of the State of Indiana in respect to special and local legislation for the assessment and collection of taxes:

(*b.*) It is in contravention of the 1st section of article 10 of the constitution of the State of Indiana: and

(*c.*) It is in contravention of sections 21 and 23 of article 1 of the constitution of Indiana.

XIV.

In not deciding that under the provisions of the act of the General Assembly of the State of Indiana, of March 6, 1893, mentioned in the bill of complaint and in the said decree, the total length of the lines or routes of the American Express Company included the "ocean" and "foreign" mileage of such lines or routes as well as its domestic land mileage, and that the proofs showed that the Indiana State board of tax commissioners in ascertaining the whole
196 length of that company's lines or routes had not included either the "ocean" or "foreign" mileage or any part of either.

XV.

In not deciding that under the pleadings and proofs the Indiana State board of tax commissioners, had in assessing the value of the "mileage" property in Indiana, of the American Express Company, mentioned in the bill and in the supplemental bills, included:

(*a.*) The value of personal property not specifically used in that company's general business, the situs of which was without the State of Indiana.

(*b.*) The value of real estate not specifically used in that company's general business, the situs of which was without the State of Indiana.

(*c.*) The value of personal property and real estate which was specifically used in that company's general business and the situs of both of which was without the State of Indiana at a time when the total fair cash value of all of the property of said company wheresoever situate was greater than the aggregate of the market and real value of all of its shares of capital stock or interests, and in not deciding that the assessments of the said State board mentioned in the bill of complaint and supplemental bills, respectively, were void in *toto*, and should be set aside by the court, because said assessment did so include said three classes of property mentioned in items (*a*), (*b*) and (*c*) of this assignment of error.

XVI.

In not deciding that under the pleadings and proofs the Indiana State board of tax commissioners had in assessing the value of the

"mileage" property in Indiana of the American Express Company, mentioned in the bills and supplemental bills included property the situs of which was without the State of Indiana and beyond the jurisdiction of said State board to assess, and that the said several assessments were therefore void in *toto* and should be set aside by the court.

197 XVII.

In not deciding that, under the pleadings and proofs, the acts and proceedings of the Indiana State board of tax commissioners, in assessing the value of the "mileage" property in Indiana of the American Express Company, mentioned in the bill and in the supplemental bills were and are in contravention of the provisions of section 1 of the 14th amendment to the Constitution of the United States.

XVIII.

In deciding and decreeing that the bill of complaint and supplemental bills should be dismissed for want of equity and in not deciding and decreeing that the complainant was entitled to relief as prayed in those bills.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made thereof as is in accordance with law and the statutes of the United States in such cases made and provided, and complainant prays a reversal of the said decretal order and decree of dismissal made and entered by said court.

CARTER & LEDYARD AND
BAKER & DANIELS,
Solicitors for Complainant and Appellant.

198 And thereupon it is ordered by the court that said petition for appeal be and the same is hereby granted and the claim of appeal therein be and the same is hereby allowed. And the complainant now files his appeal bond herein in the sum of one hundred thousand dollars, with the American Surety Company of New York as surety thereon, which bond is approved by the court, and is in the words following, towit:

Know all men by these presents, that we, James C. Fargo as president of the American Express Company and individually, as principals, and the American Surety Company of New York, as surety are held and firmly bound unto the above named William H. Hart as auditor of state of the State of Indiana and unto his successors in office and unto the above named State of Indiana, in the sum of one hundred thousand dollars to be paid to said State of Indiana and said William H. Hart as auditor of state of said State of Indiana and his successors in office to which payment, well and truly to be made, we bind ourselves jointly and severally and our and each of our heirs, executors and administrators, and successors and assigns, jointly by these presents.

Sealed with our seals and dated this sixth day of October, 1902.

Whereas, the above named James C. Fargo as president etc., and individually hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled suit, by the circuit court of the United States for the district of Indiana: Now therefore, the condition of this obligation is, that if the above named James C. Fargo as president and individually shall prosecute his said appeal to effect and answer all costs and damages that may be adjudged or awarded against him, if he shall fail

199 to make good his plea, then this obligation to be void; otherwise in full force.

JAMES C. FARGO, *As President, and* [SEAL.]
JAMES C. FARGO, [SEAL.]
By BAKER & DANIELS,
His Solicitors.

[Seal of American Surety Company of New York.]

AMERICAN SURETY COMPANY OF NEW YORK, [SEAL.]
By ROSCOE O. HAWKINS,
Resident Vice-President.

Attest: ERNEST V. CLARK, [SEAL.]
Resident Assistant Secretary.

Taken and approved by me this 6th day of October, 1902.
JOHN H. BAKER, *Judge.*

200 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States for the district of Indiana, do hereby certify that the above and foregoing is a full, true and complete transcript of the record in the cause of James C. Fargo, president, &c., *vs.* William H. Hart, auditor, &c., as fully as the same appears of record and remains on file in my office.

Witness my hand and the seal of said court, at Indianapolis in said district, this 25th day of October, A. D. 1902.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

1 UNITED STATES OF AMERICA, }
District of Indiana. }

In the Circuit Court of the United States for the District of Indiana

JAMES C. FARGO, as President of the American Express Company,
vs.
WILLIAM H. HART, Auditor of State for the State of Indiana. } No. 9620. Chancery.

Report of Examiner.

To the honorable the judges of the circuit court of the United States for the district of Indiana:

Comes now, Rowland Evans, special examiner under order of appointment made by the court in the above entitled cause, August 9, 1900, which said order of appointment is in the words and figures following, to-wit:

In the Circuit Court of the United States for the District of Indiana, May Term, 1900.

AUGUST 9TH, A. D. 1900.

Before Honorable William A. Woods, judge.

2 JAMES C. FARGO, as President of the American Express Company,
vs.
WILLIAM H. HART, Auditor, &c. } No. 9620. Chancery.

Come now the parties plaintiff and defendant by their respective solicitors, and this cause being at issue, by agreement of parties the court now here appoints Rowland Evans, Esq., special examiner in chancery in this cause to take in writing the evidence in this cause, the same to be taken at such times and places as said examiner may determine upon proper notice to be given by the examiner to the witnesses whose depositions are to be taken and to the solicitors of the respective parties; and said examiner is hereby ordered to return all depositions and evidence he shall take duly certified by him as such examiner into this court in this cause but without any finding thereon.

And now the said Rowland Evans, special examiner in chancery, submits and tenders to the court for its consideration the following evidence taken in pursuance thereof, at the several times and places stated,

That is to say:

3 Office of the American Express Company, No. 65 Broadway, New York city.

THURSDAY, *November* 22, 1900—12 o'clock noon.

The parties met.

Present: James C. Fargo, as president, etc., complainant, by Mr. Edmund L. Baylies, solicitor; William H. Hart, auditor, etc., defendant, by Merrill Moores, assistant attorney-general, his solicitor, and Rowland Evans, special examiner.

Stipulation.

It is stipulated that the testimony taken in the present case may be read in evidence on behalf of either party hereto in any litigation between the American Express Company and the State of Indiana, involving the validity of the tax sought to be imposed by the State of Indiana on said American Express Company for the years 1898, 1899, and 1900.

It is further stipulated and agreed that the time for taking testimony in behalf of the complainant be extended until December 9, 1900, without prejudice to complainant's right to apply for additional time in case he shall deem it necessary so to do, and
4 that the defendant's time for taking testimony do not run against him until after December 9, 1900.

Complainant's Evidence.

FRANCIS F. FLAGG, a witness on behalf of the complainant, being duly sworn, testified as follows:

Examination in chief.

Questions by EDMUND L. BAYLIES, Esq.:

1 Q. Mr. Flagg, where do you reside?

A. 56 West Seventieth street, New York city.

2 Q. What is your occupation?

A. I am third vice president of the American Express Company.

3 Q. How long have you been connected with that company?

A. Twenty one years.

4 Q. Please state what positions you have filled during that time.

A. I have been the private secretary to the former general superintendent, who is now president, until 1881; from 1881 I occupied the same position as private secretary to the president; in 1892 I was appointed assistant to the president, and in May 1898 I was elected third vice president of the company.

5 Q. And that is the position which you now occupy?

A. That is the position which I now occupy.

(By Mr. MOORES:)

5 6 Q. How long have you been third vice president?

A. Since May, 1898.

By Mr. BAYLIES:

6 Q. The actual president of the company is James C. Fargo, and he has been such president since when?

A. Since 1881.

7 Q. The American Express Company is a voluntary, unincorporated association of more than seven persons, existing under certain written articles of association, is it not?

A. It is.

8 Q. Do you produce the articles of association of this company that were in force in the year 1898?

A. I do.

9 Q. Is that a correct copy of such articles? (Handing paper to witness.)

A. It is.

10 Q. Has any change been made in those articles of association since 1898 up to the present time?

A. There have been no changes.

11 Q. And these are the articles of association under which the American Express Company is now doing business?

A. They are.

Mr. BAYLIES: I offer these articles of association in evidence, and they are marked "Complainant's Exhibit No. 1."

Which said articles of association are in the words and figures following, to wit:

6 COMPLAINANT'S EXHIBIT No. 1. R. Evans, Rep.

"Articles of merger and association made and entered into the twenty-fifth day of November, one thousand eight hundred and sixty-eight, between the American Express Company and the Merchants Union Express Company, as amended to and including the eleventh day of May, one thousand eight hundred and ninety-eight.

Whereas, the above-named companies have been and now are engaged in a general express business, upon various lines of travel and carriage, and, in many cases, upon common lines of travel and carriage, and with offices for the transaction of their business

7 at many common points and places, and

Whereas, the expenses attending the transacting and management of the business of the said companies are so large as to make it impossible that the said business can be carried on with any considerable profit to the shareholders in either of the said companies, and,

Whereas, it is deemed by the directors of the American Express Company and the executive committee of the Merchants Union Express Company, for the interest of the shareholders in both of the said companies, that an arrangement be made by which the expenses of doing the said business shall be largely reduced, and that

the interests of the shareholders in both of said companies will be best promoted by the merger of the said two companies into one company, as hereinafter provided, and the consolidation of the stock of the said two companies into one consolidated stock;

Now, therefore, this agreement made by and between the said two companies, under and by virtue of the power and authority conferred upon the managing officers thereof in and by the articles of association of the respective companies, and the consent in writing of a majority in interest of the shareholders in each of said companies,

Witnesseth:

8 ARTICLE I.

Merger.—That the said two companies shall be and they are hereby merged into one company, except as provided in the twenty-second section of these articles, and the American Express Company, by its directors, and the Merchants Union Express Company, by its executive committee, do hereby prescribe the following terms, conditions and stipulations for the mode of carrying the said merger into effect.

ARTICLE II.

Name.—The name of the company hereby formed shall be the American Express Company.

ARTICLE III.

Term of existence.—The business of this company shall commence on the first day of December in the year one thousand eight hundred and sixty-eight, and the said company shall continue and be in existence for and during the term of thirty years from said last mentioned day, unless the same shall be sooner dissolved by law or by a vote of the directors thereof, as hereinafter provided, or unless the same shall be continued for a longer period, and from time to time, by the unanimous vote of the board of directors, or by the consent or request in writing, of a majority in interest of the shareholders, in which latter case the board of directors, shall, by

Extension thereof.

9 resolution, determine and fix the term so authorized by the shareholders.

ARTICLE IV.

Property divided into shares.—The property and interest of this company shall be divided into and held, in shares, valued for the purposes of this agreement at one hundred dollars each; the number of said shares being hereby for present purposes fixed and limited at one hundred and eighty thousand. It being, however, expressly understood and agreed that the number of said shares so representing the property and interests of this company may from time to time be increased or decreased

Increase or decrease in number of shares.

by the unanimous vote of the board of directors, or by the consent or request, in writing, of a majority in interest of the shareholders. In case such consent or request in writing shall be procured, the directors may, by a majority vote, increase or decrease the said shares according to the terms of such consent or request.

ARTICLE V.

Allotment of stock in new company to holders of shares in constituent companies.—The shares of stock of each of the companies, parties hereto, shall be converted into the stock of the company hereby formed as follows:

The stock of each of said companies for the purposes of this consolidation and merger, is estimated and deemed to be the sum of nine millions of dollars, the said sum of nine millions of dollars being the now outstanding amount at par of the stock of the said American Express Company, and the said sum of nine millions of dollars being the present stock of the said Merchants Union Express Company, as reduced by the executive committee of said company pursuant to law, in place of the eighteen millions of original stock of said company now outstanding.

There shall be issued to the shareholders in the American Express Company the sum of nine millions of dollars of the stock of this company, to be divided among them equally, in proportion to the amount of stock held by them in that company severally, upon surrender by them of the certificates of shares held by them severally in that company.

There shall be issued to the shareholders in the Merchants Union Express Company the sum of nine millions of dollars of that stock of this company, which shall be divided among them as follows:

Each shareholder therein shall be entitled to receive a share in this company upon the surrender of two shares of the original stock in that company, or one share of the reduced stock of said company, and upon the payment to this company of five dollars each upon such original shares, or ten dollars each upon such reduced shares.

And in case any shareholder in said last named company shall fail to make such exchange and pay said last named sums within three months from the first day of January next, the directors of this company shall have power to declare any shares not so exchanged forfeited to the use of this company, and it shall be the duty of the executive committee of said last named company to declare such forfeiture in case they shall be requested so to do by the directors of this company.

ARTICLE VI.

Certificates of shares. What to contain. Personal liability of shareholders.—The interest of the shareholders in this company shall be represented by proper certificates, in which shall be specified the number of shares to which the holder thereof is entitled. That each share is subject to such assessments as may from time to

time be required and made by the directors to pay any losses, damages, expenses or other liabilities which may accrue in the prosecution of the legitimate business of this company. They shall also specify the date of the organization (of this company, and the term of its duration, and also that) the transfer of said share or shares, or the interest thereby represented, may be objected to by the board of directors of this company, in which case the same shall be purchased at its real value, to be determined as hereinafter mentioned, for the benefit of this company.

12 They shall also contain a stipulation that the persons receiving the same from this company shall thereby become members of this company, subject to all the conditions and stipulations herein contained, and also subject to the debts and liabilities, and entitled to all the benefits of any other member, as fully in all respects as though they had signed these articles; and that every assignee thereof shall receive the same, subject to all such conditions and stipulations, and all such liabilities arising from and after the time of such assignment, as fully, in all respects, as though they had signed these articles.

They shall be signed by the president and secretary of this company, and countersigned by the treasurer thereof.

ARTICLE VII.

Shares assignable.—The shares of this company shall be assignable in the usual form, either in person or by attorney, subject to the conditions herein contained, but no transfer shall be valid, so as to discharge the assignor from subsequent liability as a member of this company, until made as herein provided and entered on the transfer book to be kept by the treasurer thereof, and the assigned

13 scrip surrendered. In case any share or interest in this company shall be assigned or transferred by operation of law, or in case the transfer of any such share or shares shall be objected to by the directors, then, and in such case, the board of directors of this company shall have the right to purchase, and take for the use and benefit of this company, the interest and shares so assigned or transferred, or the transfer of which shall have been so objected to, by the paying to the person owning or representing such shares or interest, the actual market value thereof, and if the said value can not be agreed upon by the said board and the person owning or representing such interest or shares, then the value thereof shall be determined and fixed by three disinterested persons, one to be chosen by the board of directors, and one by the person or persons owning such shares, and the third by the two persons so chosen, and in case of disagreement among said appraisers, the decision of two of the persons so chosen shall be binding upon all the parties. In case said board of directors shall refuse to purchase and pay for said shares the value thereof so fixed and determined, said proposed sale thereof may be made by

Right of company to purchase, and how exercised.

the holder thereof, and the transfer thereof shall be properly entered upon the transfer book.

14 Personal liability not discharged by assignment.—No assignment or transfer by any member of this company of his interest therein shall discharge him from any liability arising previous to the date of such transfer upon the books of this company. Nor shall any assignment or transfer of any such share or shares be made while any assessment shall remain unpaid thereon, nor while the owner thereof, prior to such assignment, shall be indebted to this company or in any way liable to it, and this company shall have a lien and claim upon the shares of any shareholder indebted or in any manner liable to it, upon any account whatever, for the amount of such indebtedness or liability.

No transfer by shareholder indebted to company.

Article VIII.

Assessments, and sale of shares therefor.—It is further agreed that in case of the refusal or neglect of any shareholder for thirty days to pay and fully discharge any assessment made by the board of directors as herein provided, at such time and place as such board may direct, the whole or so many of his shares as may be requisite to pay such assessment, or any part thereof, may be taken and sold by said board of directors at public or private sale, without notice to such shareholder. It being, however, expressly understood and agreed that this company may prosecute, sue for and recover

15 any and every such assessment or assessments, or any deficiency that may remain after applying the proceeds of such sale.

Evidence.—It is also understood and agreed that in any action or legal proceeding against any shareholder upon any liability of such shareholder to said company, the statement of the grounds, particulars and amounts of such liability made by the directors, authenticated by the signature of the president, and delivered to the party chargeable before suit, shall be *prima facie* evidence of such liability and its amount as the statement of a mutual agent.

Article IX.

Rights of shareholders.—It is expressly agreed and declared as a condition precedent to any claim to be made by any shareholder, or by any one claiming any right or interest in any shares or in the joint property of this company, or in any gains, profits or losses thereof, that no claim shall be made to withdraw any part of the capital or of its increase or profits, or demand any account in relation thereto, or to make any claim whatever on this company, or its property, otherwise than according to these articles, except in case of manifest or intentional fraud in the directors. And if any such claim shall be made, this article shall be deemed absolute bar thereto.

16 ARTICLE X.

Business and powers of company.—The business and scope of this company shall include the various objects, affairs, business and undertakings hereinbefore specified, the purchasing, receiving, selling, insuring and forwarding on commission and for hire, and otherwise, of money, bullion, gold and silver coin, bank bills, drafts, bills of exchange or other property, things or freight not by law prohibited, and such other express, forwarding commission, exchange, money and agency business as is or from time to time may be usually done by express companies, or brokers, or commission merchants, or as may be deemed expedient, and from time to time determined and directed to be done by resolution of the board of directors of this company, and with the intent and for the purpose of carrying on and transacting the business and undertakings in these articles mentioned and referred to; this company shall have power to purchase, hire, rent, own and hold all necessary real and personal property, buildings, storehouses, offices, railway cars, ste-m boats, vessels, wagons, carriages, sleighs and horses, together with all property, conveniences or other things requisite in the judgment of the board of directors for carrying on and transacting such business and undertakings.

17 ARTICLE XI.

Death, &c., not to work a dissolution.—*It is further agreed*, that neither the death nor the legal incapacity of any shareholder in this company, nor the transfer or assignment of the interest of any shareholder therein, shall work a dissolution of this company; but the same shall continue as if no such death, incapacity, transfer or assignment had taken place or been made.

Company's right to purchase shares on death of shareholder.—*It is further agreed*, that in case of the death of any shareholder in this company the company shall have the right to purchase and take the interest and shares of said deceased shareholder, by paying to the owner thereof the actual value thereof at the time of the decease of such shareholder, to be determined in the manner provided by the seventh article thereof.

ARTICLE XII.

Conveyances of real estate.—*It is further agreed*, that all conveyances of real estate for the use of this company shall be taken in such manner as shall be prescribed by a vote of two-thirds of the directors, or as shall be provided by law.

18 ARTICLE XIII.

Board of directors.—The property, business and affairs of this company shall be controlled, managed and conducted by a board of not less than seven nor more than thirteen directors, and Henry Wells, Elmore P. Ross, William G. Fargo, William C. Beardsley,

Edward B. Judson, William H. Seward, Jr., James C. Fargo, John N. Knapp, Johnston Livingston, Clinton T. Backus, James M. Thompson and Theodore M. Pomeroy shall be the directors of this company for one year, and until others shall be chosen in their stead as is hereinafter provided, and each of whom shall be required to be, as a condition of his capacity for such trust, the owner and holder of one hundred shares in this company within thirty days after the scrip thereof shall be ready for delivery.

Number of directors.—They may from time to time by a three-fourths vote change their number, but the same shall not be reduced below seven, nor increased beyond thirteen; and, in case of such decrease, may designate the name of any then existing director, whose office shall terminate, and thereupon the term of office of the director or directors so designated shall cease, and no successor shall be elected to fill the same; and in case of such increase the said
19 board may proceed to fill the offices so created in the manner hereinbefore provided.

Vacancies in board.—It being further understood and agreed that in case a vacancy shall occur in said board, by death, resignation, incapacity or otherwise, prior to or in the interval of any election by the shareholders, such vacancy may be filled by said board of directors, who may elect by ballot, any shareholder who shall then be the owner and holder of one hundred shares in this company, such director.

It is further agreed, that in case any director shall become permanently incapable, for any cause, of transacting ordinary business, or in case any director shall be absent from the meetings of the board for more than twelve months continuously without leave of the board of directors, or shall cease to be a shareholder in this company, his office as director shall become vacant.

Any director may, with or without cause, and without notice, be removed from his office as director by the unanimous vote of all the other members of the board of directors.

Article XIV.

Officers.—The officers of the company shall be a president, a first vice-president, a second vice-president, a third vice-president, a
20 secretary and a treasurer. The president and vice-presidents shall be members of the board of directors. Said officers shall respectively be elected by the said board of directors, by a vote of a majority thereof, and shall hold their offices respectively until removed by a vote of two-thirds of the whole number of such board, or until, in the case of the president, or a vice-president, the office of such person as director of said company shall cease by operation of any of the causes in these article- of agreement specified: and any vacancy in any of the offices created by this article may be filled by said board of directors by a vote of a majority of the whole number thereof.

In case the office of president shall at any time become vacant by reason of death, resignation, or otherwise, the duties of the president

shall devolve upon the vice-presidents in the order above named, until another president shall be elected as provided in this article.

In case of the temporary inability of the president to perform the duties of his office, by reason of absence or other disability, the powers and duties of his office shall devolve upon one or more
21 of the vice-presidents in such manner and to such extent as may from time to time be determined by resolution of the board of directors or the executive committee.

Article XV.

Election of directors by shareholders.—*It is further agreed*, that whenever any number of shareholders own- and holding a majority of the shares in this company, shall unite in presenting to the secretary a written request for an election of directors, it shall be the duty of such secretary to call a meeting of the shareholders for that purpose, by a notice of at least sixty days, stating therein the time place and purpose of said meeting. The manner of serving said notices shall be prescribed by the board of directors, who shall also appoint the proper inspectors, and make all other needful rules and regulations to such election appertaining. Said election shall be by ballot, and each shareholder shall be entitled to as many votes, either in person or by proxy, as he owns shares in this company. But it is hereby expressly understood and agreed, that but one such election shall be held in any one year.

Article XVI.

Powers and duties of directors.—The directors of this company, or a majority of them, except as herein otherwise specially provided, are hereby authorized and empowered to cause to be done
22 and executed, the objects, undertakings and business, specified, contemplated or intended in these articles, and further to do and execute all and every authority, power and thing within the general scope and purpose of this company, which might or could legally be done by all the joint associates, if present and acting. And with this intent and meaning, said board of directors shall have power to make all necessary rules, regulations, and by-laws, for their own government, and for the regulation and government of the business of this company, and for the safekeeping, sale or other disposal of its property and effects. And the said board of directors, in and by such rules, regulations and by-laws, shall have power to delegate to any one or more members thereof, to be by them designated and appointed for that purpose, all power and authority necessary to carry into effect any arrangement, contract or agreement made with any other company or companies, relative to the business of said companies, and to prescribe the mode and manner of the execution thereof.

It being, however, expressly understood and provided, that no director shall use or employ the money, credit or name of this company otherwise than in its legitimate business. Nor shall any share-

holder or other person, unless duly authorized by the board of directors, use or sign the name of this company, nor in any
23 manner pledge its credit, nor have power to create any obligation against the same. And said board of directors are hereby authorized and empowered to make, demand and collect, as hereinbefore mentioned, any and all assessments that may be requisite to pay any and all losses, damages, expenses, or other liabilities that may be incurred, or which shall accrue in the prosecution of the legitimate business and objects of this company.

They may from time to time prescribe the occupations, powers, duties and compensations of the officers mentioned in the fourteenth article hereof.

They shall prescribe the duties and services of any one or all of their own members, to be rendered in and about the business of this company, and determine and fix the compensation to be paid therefor.

They may themselves appoint all such subordinate officers, agents and employees as they may deem requisite, prescribe their occupations, powers, duties and compensations, and at their discretion remove and discharge the same; or they may in and by the rules, regulations and by-laws aforesaid provide for the appointment, removal and discharge of all such subordinate officers, agents and employees and the regulation and determination of their occupations, powers, duties and compensations.

They shall meet together for consultation relative to the
24 business and affairs of this company, and at such meetings a majority of the whole number shall constitute a quorum. They shall keep a record of their proceedings, and in all cases of a difference of opinion a majority of those present shall decide and control, except as herein provided. They shall cause to be kept all proper stock and transfer books, books of account, contracts, and other important records. They shall cause quarterly reports to be made and entered in a book to be kept for that purpose with the treasurer or secretary, containing a clear and simple statement of the business and affairs of this company, showing its earnings and expense, profits and losses, cash in hand, property, assets and debts, which said report, together with all books of account and other records, shall at all reasonable times be open to the inspection of any of the shareholders. They shall also have power from time to time to declare and pay dividends out of the net earnings of this company, or out of the proceeds of the sale of any of its effects, or both; *Provided, however*, and it is hereby declared, that said directors shall not pay dividends on any fractional parts of shares in this company; neither shall any dividend be made so as to reduce the substantial assets of this company below the value of five
25 millions three hundred thousand dollars, of which at least twenty-five per cent. shall be in cash or in available cash securities, and the balance thereof invested in real estate, equipments and outfit.

They may call meetings of the shareholders at their discretion,

and it shall be their duty to call any such meeting whenever requested so to do by a majority in interest of the shareholders.

They shall also have power to purchase any other express company or companies, and to make any and all arrangements, contracts and agreements relative to the business of said companies, or relative to any connection therewith, division of freight or profits or tariffs of rates for carrying on said business, and to create any new line or lines, and to sell out or exchange any line or lines, and to sell and dispose of and convey any portion of the property of this company and its goodwill to any other company or individual, and to merge or con-olidate this company with any other express or transportation company or companies, upon such terms and conditions as they shall think best for the interests of the shareholders, whenever they shall deem it for the best interests of the shareholders of this company; *provided, however*, and it is hereby expressly understood and agreed, that nothing herein contained shall authorize
26 said directors, except by a unanimous vote, to do any act whereby this company shall be merged in or consolidated with any other company or whereby the entire property, business and goodwill of this company shall be disposed of to any company or individual, without first obtaining the written consent of a majority in interest of the shareholders. In which case the directors may by a majority of their number make such merger or consolidation, with any other express company or companies, or so dispose of said entire property, business and goodwill, as in their judgment shall be for the best interests of the shareholders of this company.

They are also authorized to invest the assets of this company in real estate, or in equipment or outfit, or in such stocks, bonds, mortgages, notes or other securities, as may be deemed desirable for purposes of investment, or be deemed conducive to the furtherance of the business of the company; and may from time to time sell and dispose of any of such investments, and re-invest the proceeds thereof, and may anticipate the sale of any of such investments, by the hypothecation thereof to secure the purchase money of any other of such above-named securities as the said board may choose to purchase upon the credit of this company, and such purchases and sales may include the stock of this company: the intention
27 hereof being to give to said board full authority for investment, in its discretion, of all the moneys of this company, with power to purchase any securities upon credit if deemed advisable, and to hypothecate at any time any or all of its securities in maintainance of such credit.

Said board may also subscribe in the name of this company for stock or bonds of any railroad in process of construction, or of any other uncompleted enterprise, when believed to be in furtherance of the business interests of this company. They are also authorized to sell and dispose of any share or shares of the stock of this company that may be forfeited to or purchased by this company under the provisions contained in these articles.

The said board of directors shall also have power, whenever it

may be deemed for the best interests of this company, by a resolution passed by a unanimous vote of the members thereof, to dissolve this company. They are also authorized to dissolve this company by a vote of a majority of their number, upon first procuring the written consent or request of a majority in interest of the shareholders, that the same be dissolved. And in case of the dissolution of this company, said directors are hereby expressly authorized, by themselves or by their attorney or attorneys, to adjust, settle
28 and liquidate the business and affairs thereof.

Article XVII.

Executive committee.—There shall be an executive committee of the board of directors, to consist of not less than three members thereof.

The board of directors shall have power, from time to time, by its by-laws to authorize said executive committee to supervise, control, manage and direct the property, business and interests of the company during the recess of the board, to such extent and in such manner as shall in that behalf be provided in and by said by-laws.

The executive committee shall be deemed in permanent session at the principal office of the company, but the presence of a majority of such committee shall be necessary to constitute a quorum for the transaction of business, and the affirmative vote of a majority of such quorum shall be necessary upon the adoption of any vote or resolution.

A record of the proceedings of the executive committee shall be kept and submitted at each quarterly meeting of the board.

The board of directors shall have power by its by-laws, not inconsistent with the provisions of this article, to determine from time to time the number of members of whom the executive committee shall consist and the method of their appointment, and
29 the period for which they shall serve.

Article XVIII.

Principal office of company.—The principal office of this company shall be located in the city of New York, or at such other place as the board may from time to time direct by a vote of two-thirds of the whole number thereof, in which office shall be kept its stock and transfer books and principal books of account and other records, and unless otherwise ordered by the board by the like vote, all the moneys of said company not otherwise invested, nor otherwise deposited for use in the current business of the company, shall be deposited in such banks or trust companies in the city of New York as shall be directed by the board of directors.

Meetings of directors.—And all meetings of the board of directors shall be there held unless otherwise ordered by said board.

Meetings of the board of directors may be called at any time by the president of this company, and it shall be his duty to call such meetings whenever requested in writing so to do by any two mem

bers of said board of directors; said meetings may likewise be called by any two members of said board by a notice to be signed by themselves. Adequate and reasonable notice shall be given of all such meetings to every member of said board, in the manner to be
30 prescribed by the by-laws of the board of directors.

ARTICLE XIX.

Legal documents, how executed.—All bonds, powers of attorney, or other sealed instruments, except deeds of real estate and leases, shall, in the absence of any direction of the board of directors to the contrary, be signed by the president and secretary and countersigned by the treasurer of said company. And all suits or actions shall be prosecuted in the name of the president in all States and places where it can legally be done.

Suits, how prosecuted.

ARTICLE XX.

Conveyances to new company by constituent companies.—The American Express Company does hereby grant and convey to this company all and singular, the property, choses in action and effects, particularly described in Schedule "A" hereto annexed, except the real estate therein described, which is this day conveyed to this company in the name of its president.

The Merchants Union Express Company does hereby grant and convey to this company all and singular the property, choses in action and effects particularly described in Schedule "B" hereto annexed, except the real estate therein described, which is this day conveyed to this company in the name of its president.

31 The said two companies do hereby severally assign and transfer to this company, all their interest in a certain contract between said two companies and the Adams and United States Express Companies, dated December 21st, 1867, and in the contract supplementary thereto, dated Oct. 2nd, 1868.

They also assign and transfer to this company any and all existing contracts with railroad companies.

ARTICLE XXI.

Debts of constituent companies.—*It is further agreed*, that each of the said companies shall pay and fully discharge all debts and liabilities which it owes or has incurred upon any account whatever.

ARTICLE XXII.

Collection of debts, &c., of constituent companies.—But it is expressly understood and agreed, that the parties hereto, hereby each reserves the right to retain and exercise its separate existence as a company and all its rights and powers under their several articles of association, so far as to enable it to collect all debts due or owing it, to sell and dispose of all property held or owned by it, and to

settle and adjust all matters between it and its shareholders and creditors, notwithstanding anything hereinbefore contained.

32 ARTICLE XXIII.

Amendment of articles.—It shall be competent for the said board of directors, by a unanimous vote of all the members thereof, at any time to change, alter or amend these articles of agreement, or any of the provisions thereof, in such manner not inconsistent with the general scope and intent of these articles, as they may deem expedient for the more effectual promotion of the interests of this company.

Witness: the signatures hereto of the directors of the American Express Company, and of the president of the Merchants Union Express Company, the day and year first above written.

HENRY WELLS, *President.*
WM. G. FARGO,
JAS. C. FARGO,
EDWARD B. JUDSON,
ALEX. HOLLAND,
Directors of the American Express Company.

33 THE MERCHANTS UNION EXPRESS COMPANY,
By E. P. ROSS, *President.*

The undersigned, members of the executive committee of the Merchants Union Express Company, approve the execution of the above contract.

THEO. M. POMEROY. WM. H. SEWARD, JR.
W. C. BEARDSLEY. C. T. BACKUS.
J. N. KNAPP. E. P. ROSS.

34 12 Q. These articles of association are comprised from pages one to twenty inclusive of the printed book which you have produced and which has been marked "Complainant's Exhibit No. 1?"

A. Pages one to twenty, yes sir.

13 Q. Where is the principal place of business of this company?

A. 65 Broadway, New York.

14 Q. And where are the meetings of the company held, and its books and general assets kept?

A. At the same place, 65 Broadway, New York.

15 Q. All accountings from the various agencies that you have at other places in this country and elsewhere are made to it in this city?

A. Yes sir, all of them.

16 Q. About how many members are comprised in the American Express Company?

A. At the present time?

17 Q. Yes, approximately.

A. About four thousand; in the neighborhood of four thousand.

18 Q. On the first of April, 1898, how many were there, approximately?

A. Between three and four thousand.

(By Mr. MOORES:)

19 Q. I think you charge more than three thousand.

A. More than three thousand.

35 By Mr. BAYLIES:

20 Q. And these various members own various interests in this association?

A. Yes sir.

21 Q. How are those interests represented?

A. They are represented by certificates of interest.

22 Q. To what amount?

A. Of the par value of one hundred dollars each.

23 Q. And aggregating what amount?

A. Aggregating one hundred and eighty thousand shares, representing eighteen million dollars.

24 Q. Of par value?

A. Of par value.

25 Q. Has the so-called market value of any of those shares during the past three years been less than one hundred dollars per share?

A. No

26 Q. Do all these shareholders stand on a common footing so far as ownership or proprietorship in the assets of the association is concerned?

A. They do, represented by their interests shown by the certificates.

27 Q. Do these various members live mostly in one place or are they widely scattered?

A. Oh they are very widely scattered; all over the United States and in foreign countries also.

28 Q. When you first entered the employment of this asso-
36 ciation was it carrying on what is commonly known as an express business?

A. It was.

29 Q. And it had been doing that for some time prior to when you joined it?

A. Since 1850.

30 Q. What is the general nature of that business, in a few words?

A. It is the handling of parcels, freight, money and valuables from a consignor to a consignee. Is that sufficiently particular?

31 Q. Yes. You mean accepting them from one individual to carry?

A. Accepting them from one individual to carry.

32 Q. And delivering them to another?

A. And delivering them to another, yes sir.

33 Q. And the business deals chiefly with articles of value, as

contradistinguished from the ordinary description of goods which are classed as freight?

A. Yes sir, the larger percentage of packages handled by us are of a valuable nature.

34 Q. And what means does the company use to obtain and transport all these various articles which you carry?

A. We make use of the facilities afforded us by various railroad lines with whom we have contracts for space in cars over their lines, for which we pay certain fixed sums.

35 Q. Does your association own any cars or any railroad
37 lines?

A. We do not. The cars are all furnished by the railroad companies as part of the contract which is entered into between us.

36 Q. Do you employ other means of transportation besides rail?

A. We employ steam boat lines under similar conditions; also in some few instances stage routes.

37 Q. During all the time that you have indicated you have been connected with this association, has it been doing what you have described as an express business in the State of Indiana?

A. It has.

38 Q. Can you state in a general way through what parts of the United States and other parts of the world if any your association carries on this express business?

A. We transact business in all of the New England, Middle, Middle-western, and so-called Northwestern States. I can give it to you more particularly if desired.

39 Q. No.

A. And I should add to that, a few of the Southern States.

40 Q. How is it as to any points outside of the United States?

A. We are also transacting business between this country and points in Canada, and this country and points in New Bruns-
38 wick, Nova Scotia, and also to points in Europe, Africa, the West Indies, South America. When I say Europe I mean Great Britain of course and its possessions; Europe, Great Britain and its possessions.

41 Q. Has your association made returns to the taxing authorities of the State of Indiana for the years 1898, 1899 and 1900, in compliance with the tax law of that State?

Mr. MOORES: To that question we object on the ground that the return will speak for itself.

A. We have.

42 Q. What official of the American Express Company has had charge of the preparation in each of those years of the returns that have been filed in the State of Indiana?

A. I have.

43 Q. Does your company own any personal property in the State of Indiana which it used in connection with its express business in that State?

A. It does.

44 Q. What is the nature of that personal property?

A. Horses, wagons, safes, harnesses, trucks, office furniture and so forth.

39 45 Q. In the return made to the State of Indiana for the year 1898 there is a schedule giving the assessed values in various counties of that State of personal property and real estate aggregating $16,015.00. I ask you whether the property specified in that schedule is property of the character which you have just described as being what you require to carry on in the State of Indiana your express business?

A. Yes it is.

(By Mr. MOORES:)

46 Q. Except the real estate?

A. Except the real estate.

(By Mr. BAYLIES:)

47 Q. In the return made to the State of Indiana for the year 1899, there is a similar schedule of assessed values aggregating $16,334.00. Does the answer that you have just given apply to the items contained in that schedule?

A. It does.

48 Q. And in the tax return for the year 1900 there is a similar schedule with items aggregating $15,724.00. I ask you whether the answer that you gave to the question affecting the return for the year 1898 is applicable to the same schedule for the year 1900?

A. It is.

49 Q. In another schedule attached to the return for the year 1898 describing specific real estate with permanent improvements owned by the association, situated outside of the State of Indiana

40 and not directly used in the conduct of the business of the association are certain named pieces of real estate the assessed value of which is given in this schedule at the sum of $997,220.00. I ask you as to that real estate how it came into the associations' hands, and for what purposes it is used by the association?

A. This property was purchased by, or acquired by the American Express Company during various times in its existence as an investment of its moneys and was held by the company at that date and at the present time as money of the company invested, the same as any other association or person or individual would hold money for investment. It is not used in any way for express business; it is held by the treasurer or the company, as an asset on our books.

50 Q. Now in that same schedule the market value of the real estate just referred to is stated at $1,983,534.30. Please state what is meant by that expression "market value."

A. The market value as we call it there, is the value as shown by our books; that is the cost of these properties as they originally came to us and the various costs which have been added to them by reason of additions thereto in respect to improving the property.

51 Q. Was any appraisal made before giving this figure of
41 the market value to ascertain for what price these various items of real estate could be sold?

A. No we took it as being a fair valuation.

52 Q. It represents the cost on your books?

A. It represents the cost on our books.

53 Q. And do you know whether or not the actual value for which this real estate as a whole could be sold would equal or exceed what you have there termed the "market value."?

A. I have reason to believe, without any actual knowledge as to the actual value of the real estate, that it would exceed that amount. We simply concluded that would be a fair way to arrive at the value of it on our books, and I have no doubt that is correct.

54 Q. There is a similar schedule of real estate attached to the tax return for the year 1899 in which the assessed values are stated at $969,800.00, and the market value $2,026,747.88. Please state whether those are the same items of real estate that were specified in the 1898 tax return?

A. The same except the item, 172 St. Johns place in this city, which has been sold.

55 Q. And the assessed values there stated are taken from the tax books of the city of New York?

A. They are. and at other places where the property may be located.

56 Q. And as to the market value just referred to it is made
42 up on the same basis as in the return for 1898?

A. The same way.

57 Q. Nominal cost value?

A. Cost value as shown by the books.

58 Q. And in the return for the year 1900 there is a similar schedule of real estate of the same character as in the two preceding years, the assessed value of which appears to be $1,129,200.00 and the market value of which is stated at $2,026,747.88. I ask you whether these items of assessed value and market value are made up in the same way as you stated they were made up for the year 1899?

A. They are.

59 Q. Now during those three years, 1898, 1899 and 1900, has the American Express Company owned other real estate than what has been specified in the schedules to which I have just called your attention?

A. Yes we have.

60 Q. Have you a statement of that other real estate?

A. Yes I have a statement which shows all the real estate of the company including of course those which I have already testified as to. (Witnesses produces and hands paper to counsel.)

61 Q. In this statement which you have just produced how are the values given opposite each item of real estate arrived at?

43 A. In the same way. The values as shown by this statement are the values as they appear,—as the cost appears upon the books of the company, as the cost of each item.

62 Q. Those values are stated in their column headed respectively, 1897, 1898 and 1899. Does the real estate specified in the column headed 1897 form the basis for the statement as to the value of the real estate which you gave in your return to the Indiana authorities in the year 1898?

A. As of the first day of April, 1898, yes.

63 Q. And what does that statement show as to the entire cost value of the real estate owned by the American Express Company on the 1st day of April, 1898?

A. $5,059,972.30.

64 Q. And deducting the cost value as appears on the books of he real estate which was owned by the company and which was not either directly or indirectly used in the carrying on of the express business, what was the value of the remaining real estate in the hands of the company on the 1st of April, 1898?

A. $3,076,438.00.

65 Q. Now looking again at this statement which you have produced tell me the value of the real estate of the company on the 1st day of April, 1899.

A. $5,058,695.69.

66 Q. And of this real estate valued at a cost of $2,026,747.88
44 was not used directly or indirectly as you have stated for express business, leaving as the other real estate which your company owned at that time of the value of how much?

A. $3,032,947.81.

67 Q. Now please make the same calculation as to the real estate owned by the express company on the 1st day of April, 1900.

A. The total value was $5,121,293.16; deducting from that the real estate specified in the schedule annexed to the tax report for 1900 as to which I have already testified of the market value of $2,026,747.88, leaves the other real estate of the express company on the 1st of April 1900 worth $3,094,545.28.

68 Q. These items include all the real estate that the company owned everywhere during those three years, 1898, 1899 and 1900?

A. The entire real estate owned by the company.

69 Q. And what if any part of that was situated in Indiana?

A. Real estate situated in Indianapolis on Georgia street valued upon our books at $17,472.16.

70 Q. For each of those three years?

A. Yes.

Mr. Baylies: I offer that list of real estate in evidence.

45 The said schedule of real estate produced and identified by the witness and so offered in evidence is now marked Complainant's Exhibit No. 2 and the same is hereto attached and is in the words and figures following, to-wit:

46

COMPLAINANT'S EXHIBIT No. 2.

American Express Company—Real Estate.

		1897.	1898.	1899.
New York city	55 to 61 Hudson St.....	725,074.87	725,074.87	725,074.87
Do.	157 Hudson St	24,770.—	24,770.—	24,770.—
Do.	Hubert & Laight Sts ...	169,628.48	169,628.48	179,077.76
Do. ...	365 Broadway.	700,000.—	700,000.—	700,000.—
Do.	Broome & Elm Sts	100,000.—	100,000.—	100,000.—
Do.	Lexington Ave. & 48th St.	369,741.33	379,394.93	379,394.93
Do.	302 Canal St	50,823.08	50,823.08	50,823.08
Do. ...	138th St. (Mott Haven, N. Y.).	25,959.54	25,959.54	25,959.54
Do.	47th St. & Madison Ave.	100,000.—	100,000.—	100,000.—
Do.	Fordham...	7,194.73	7,194.73	7,194.73
Chicago, Ills.....	Monroe St	580,171.08	579,475.48	579,175.48
Do.	Custom House place....	226,763.47	226,763.47	226,763.47
Do.	Sebor St.....	448,372.27	448,372.27	448,372.27
Albany, N. Y.....	B'way, Steuben & Montgomery.	70,000.—	70,000.—	70,000.—
Do.	B'way & Montgomery St.	44,011.27	44,011.27	44,011.27
Do.	Maiden Lane & Dean St.—Nat.	92,953.50	92,953 50	92,953.50
Boston, Mass.....	Canal & Friend Sts	234,324.67	234,324.67	286,772.86
Do.	Congress St.....	215,183.81	215,183.81	215,183.81
Buffalo, N. Y	Carroll St	80,062.96	80,062.96	80,062.96
Do.	Main & Erie Sts.	142,493.26	142,493.26	142,493.26
Do.	Exchange St	34,654.69	34,654.69	34,654.69
Bangor, Me	Franklin St.....	6,435.39	6,435.39	6,435.39
Cleveland, O	St. Clair & Banks Sts...	50,000.—	50,000.—	50,000.—
Do.	Hamilton & Wood Sts..	38,576.11	38,576.11	38,576.11
Detroit, Mich.....	Larned St.	11,482.20	11,482.20	11,482.20
Do.	Do. & 4th St.....	33,945.74	33,945.74	33,945.74
St. Paul, Minn. . .	Grove St.....	28,697.28	28,697.28	28,697.28
Ogdensburg, N. Y..	State St	8,750.—	8,750.—	8,750.—
Do. ..	Do	2,783.91	2,783.91	2,783.91
Des Moines, Ia	First St	5,688.15	5,688.15	5,688.15
Indianapolis, Ind..	Georgia St.....	17,472.16	17,472.16	17,472.16
Pierre, So. Dak....	Dakota Av.....	626.44	626.44	626.44
Rochester, N. Y...	State St	70,000.—	70,000.—	70,000.—
Do. ...	North Clinton St.....	36,306.16	36,306.16	36,306.16
Minneapolis, Minn.	Western Ave.....	21,846.05	21,846.05	21,846.05
Augusta, Me.....	Water St.....	8,000.—	8,000.—	8,000.—
Portland, Me.....	Cross St	26,705.43	26,705.43	26,705.43
Syracuse, N. Y....	Walton St	17,118.66	17,118.66	17,118.66
Milwaukee, Wis...	Fourth St...	6,520.80	6,520.80	6,520.80
Do. Wis...	Fifth St.....	38,914.56	38,914.56	38,914.56
Utica, N. Y	Water St	11,690.41	11,690.41	11,690.41
Auburn, N. Y.....	Gennesse St	14,217.37	14,217.37	14,217.37
Kansas City, Mo ..	Washington St	22,125.75	22,125.75	22,125.75
Troy, N. Y.,—Nat.	Federal St	21,357.60	21,357.60	21,357.60
Burlington, Vt ...	St. Paul St.....	9,853.47	9,853.47	9,853.47
St. Louis, Mo.....	Belmont & 16th Sts	82,339.70	82,339.70	82,339.70
Paterson, N. J... .	Marshall St	1,500.—	1,500.—	1,500.—
New Orleans, La...	Dryades St.....	15,601.34	15,601.34	15,601.34
Brooklyn, N. Y....	St. Johns place.....	9,234.61		
		$5,059,972.30	5,059,695.69	5,121,293.16

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47 71 Q. Please state in general terms what use was made of the real estate that the company owned in each of those three years that is not specified in detail in the schedule annexed to your tax returns—worth a little over three million dollars as you have testified?

A. This real estate is owned by the company as one of its assets and is leased by the treasurer of the company to the line, the same as any other landlord, for which the line pays rent to the treasurer the same as rent is paid to the treasurer of the company in the case of any of these other pieces of property which have been enumerated as not used expressly in the express business.

(By Mr. MOORES:)

72 Q. By "the line" do you mean division?

A. I mean the operating department, the express department of this company.

(By Mr. BAYLIES:)

73 Q. Can you state as to this property whether in each instance the entire piece of property is used for express purposes?

A. In a number of cases that is not the fact; for instance Chicago, Illinois; the piece of property mentioned as the Munroe Street property and which is valued in 1898 at $580,000; that property is partially occupied in the express business; the larger proportion of that building is sub-let to other tenants, the revenue of which of course comes in and is turned in to the company as a credit.

48 74 Q. Is that true of any other piece of property?

A. That is also true of the Broadway, Steuben and Montgomery Street property in Albany. It is also true of the property in State street, Rochester, New York, and possibly at some of the other places where we have so-called rent credits to sub-tenants; as to these I cannot now speak; only as to those I have already referred to.

75 Q. Now as to all of that real estate the company pays taxes to the local authorities in the place where each parcel is situated does it not?

A. Yes it does.

76 Q. You have stated on that list the various States and cities in which this various real estate is located.

A. Yes sir.

77 Q. Now please state whether on the 1st of April, 1898, 1899 and 1900 this association had personal property other than office furniture, safes, wagons, and the other items of property which you have said it used in its carrying on the actual express business.

A. Yes the company did have.

78 Q. What is the general nature of this other personal property?

A. It consisted of railroad bonds, stocks of railroads and other companies, bills-receivable, including loans, and bonds and mortgages and other similar securities.

49 79 Q. Did you mean to include in your last answer what are commonly termed accounts current?

A. Oh no.

80 Q. Now what was the total value on the first day of April, 1898, of the property owned by the American Express Company of the character which you have just described?

A. The total value, that is the market value, was $15,143,344.33.

81 Q. In the return that you made to the State of Indiana for the year 1898 it is stated that the market value of these securities such as you have just described was the sum of $15,501,344.33. Please state whether this last named figure was correct.

A. The last named figure was not correct by reason of an error made in the accounting office of the company. One of the items was erroneously figured at a higher rate through a clerical error,—at a higher rate than the market value of it at that time; and as soon as we discovered it we of course made a statement to that effect. It was a clerical error.

82 Q. Have you caused to be prepared a statement showing in detail the character of the various investments making up this sum of $15,143,344.33?

A. I have the detail before me in a statement which has been prepared by the treasurer of the company.

50 83 Q. This statement shows the railroad bonds, railroad stocks, express company stocks, transportation companies' stocks and miscellaneous stocks that were actually owned by the company on the first day of April, 1898, does it not?

A. It does.

84 Q. And what was the market value, the total market value of those securities at that time?

A. $14,127,515.63.

85 Q. And when had those securities been acquired by the company, speaking generally?

A. Oh for a period of time from 1868 down to 1897.

86 Q. Have you in the statement which you have prepared given the dates when those various securities were purchased by the company?

A. It shows in this statement.

87 Q. And does that statement also show the cost and the market value at which the various securities were taken at that time?

A. It does.

Mr. BAYLIES: I will now introduce that statement in evidence.

The statement last referred to is now admitted in evidence, marked by the reporter Complainant's Exhibit No. 3 and is in the words and figures following, to-wit:

Date purchased.	Amount.	Bonds.	Par value.	M'k't r'te.	Cost.	Market value.
Ap'l 22/84	$200,000.	Dakota Central R. R.		115	$226,062.50	$230,000.
Aug. 10/86	200,000.	Cincinn. Ind. St. L. & Chic. R. R.		101	200,000.	202,000.
Feb. 24/88	100,000.	New York & No. R. R.		126	104,500.	126,000.
Ap'l 5/88	150,000.	Morris & Essex R. R.		141	204,875.	211,500.
Jan. 23/91	150,000.	Kal. All. & Gr'd Rapids R. R.		120	165,291.67	180,000.
Dec. 18/91	250,000.	Lehigh Valley Terminal R. R.		112	268,680.57	280,000.
Jan. 20/92	100,000.	Pittsburg, McK'sp't & Y. R. R.		140	128,316.67	140,000.
Feb. 1/92	100,000.	Chicago & Western Indiana R. R.		117	116,000.	117,000.
May 9/92	100,000.	Toledo, St. Louis & Kas. City R. R.		86	99,000.	86,000.
May 18/92	75,000.	Mich. Cent. (Detroit B. C. b'ch) R. R.		120	83,489.58	90,000.
June 1/92	50,000.	St. Paul & No. Pac. R. R.		126	61,535.	63,000.
Aug. 26/92	250,000.	Central R. R. of New Jersey		114	277,375.	285,000.
June 1/93	100,000.	Long Dock Co.		136	123,500.	136,000.
Jan. 5/94	100,000.	Bangor & Aroostook R. R.		90	90,000.	90,000.
July 17/96	100,000.	Mil. & Lake Winnebago R. R.		100	100,000.	100,000.
Oct. 22/97						
Nov. 19/97	200,000.	West Shore Railroad		109	218,700.	218,000.
Oct. 26/97	250,000.	Lake Shore & Mich. So. R'way		102	259,655.	255,000.
Oct. 28/97	250,000.	New York Central & H. R. R. R.		104	259,375.	261,250.
Nov. 18/97	200,000.	Mich. Central (Air Line Div.) R. R.		106	218,500.	212,000.
	$2,925,000.					
	No. shares.					
		Stocks.				
Nov. 25/68 to Jan. 17/84	38,481.	American Express Co.	100	125	1,730,312.69	4,810,125.
July 31/71 to Jan. 17/84	12,260.	Merchants Desp. Tra[illegible] Co.	100	100	700,970.	1,226,000.

Feb'y 21/84	333.	Intercolonial Express Co	100	.....	8,334.	8,334.
Dec. 11/90	1,000.	Michigan Central R. R.	100	106	90,025.	106,000.
Dec. 11/90	1,000.	Chicago & No. Western R. R.	100	119	101,925.	119,000.
Apr. 22/91	1,200.	Delaware & Hudson Canal Co	100	107	124,335.88	128,400.
Apr. 23/91	800.	Adirondack Express Co	50	50	36,824.80	40,000.
Apr. 25/93 to Mar. 28/98	20,689.	Boston & Maine R. R.	100	163	3,314,769.63	3,372,307.
Feb. 15/98	3,000.	N. Y. Cent'l & H. R. R. R.	100	111	352,875.	333,000.
Jan. 3/94	108.	Wickes Refrigerator Car Co.	.....	.....	3,392.17	3,392.17
Jan. 2/94	2,000.	Bangor & Aroostook R. R.	100	.....	200,000.	200,000.
Apr. 1/95	4,795.	National Express Co	100	.....	80,971.90	479,500.
M'ch 31/91	½	Int. Jackson's Express	.....	.....	12,500.	12,500.
Jan. 19/92	.....	Value in United States Hotel, Saratoga, N. Y.	.....	.....	5,000.	5,000.
July 17/96	15.	Milwaukee & Lake Winnebago R. R. (Manitowoc Division)	.....	.....	1,207.46	1,207.46
					$9,968,299.52	$14,127,515.63

14,127.
157

52 88 Q. Did your company on the 1st of April, 1898, hold certain bills-receivable?

A. Yes it did.

89 Q. To what extent? To what amount?

A. To the amount of $856,490.00.

90 Q. What was the nature of thos- bills-receivable?

A. Well they were various loans made to companies and individuals for which the company held collateral security.

91 Q. And the aggregate amount of those loans was the sum of $856,490.00 at that time.

A. It was.

92 Q. And are these loans -till outstanding or have some of them been paid out? Have there been changes?

A. Oh yes there have been changes, various changes from time to time.

93 Q. Were those for the most part time loans or call loans?

A. They were for the most part call loans.

94 Q. You mean that your company had taken its cash and loaned it to various individuals and companies on their obligations and with collateral which they had given you for those obligations, and which you held until those obligations should be redeemed?

A. We did; in lieu of taking this amount of money and investing it in bonds and stocks or other securities the company for the

53 time being loaned its money.

95 Q. Just as a bank does?

A. Precisely.

96 Q. Did you also on the first of April 1898 have any bonds and mortgages?

A. We did.

97 Q. For how much?

A. For $159,338.70.

98 Q. And what did those bonds and mortgages represent?

A. Represented moneys which the company had advanced upon real estate situated in different parts of the country and for which the company held as is customary the usual mortgages and bonds.

99 Q. And was the company at the time receiving interest on those mortgages?

A. Certainly.

100 Q. And I understand you to testify that this amount represents the investment of the company's funds in bonds and mortgages to that extent just as any other form of investment?

A. In the same way that we invested other funds of the company.

101 Q. On the first of April, 1899, did the company have any assets consisting of personal property of the character which you have just said it had, on the first of April 1898?

54 A. It did.

102 Q. Were they substantially the same as those on the first of April 1898?

A. With an increase as shown by the statement.

103 Q. What was the market value of the assets, personal prop-

erty of the character which you have just described, which the American Express Company owned on the 1st day of April, 1899?

A. It amounted to $16,600,120.95.

104 Q. Made up how?

A. Made up of bonds of the market value of $3,663,600.; stocks, $11,316,966.63; bills-receivable $1,450,215.62:, bonds and mortgages $169,338.70.

105 Q. Were these stocks railroad and transportation companies' stocks such as the company had on hand in April 1898?

A. These were railroad, express and transportation companies' stocks.

106 Q. Did the company have similar property in its hands on the 1st of April 1900?

A. It did.

107 Q. And what did that property then consist of and what was its market value?

A. It shows a total of $18,640,461.13.

108 Q. And how was that amount made up?

A. That was made up of bonds of the market value of
55 $4,886,880; stocks $13,317,861.33; bills-receivable $73,390; bonds and mortgages $179,338.70 and cash on hand uninvested $182,991.10.

109 Q. Speaking generally were most of the securities namely stocks and bonds which are specified in detail in "Complainant's Exhibit 3" as being on hand on the first of April 1898, on hand on the first of April, 1899 and the first of April 1900.

A. They were on hand with such additions and changes as may have been made during the interim.

110 Q. Were there any substantial changes, I mean by that was any considerable proportion of the securities that you have stated were in the company's hands on the first of April 1898 sold prior to the first of April 1900?

A. They were not; they are substantially the same; substantially the same investments are held today.

111 Q. With additional ones?

A. With additional ones and some few sales which have been made. Substantially it is the same list.

112 Q. Now whereabouts are these securities kept?

A. They are kept in the city of New York.

113 Q. Where were they on the first of April and how long have they been kept there?

A. Kept there ever since we owned them.

114 Q. And are now there?

56 A. They are still there.

115 Q. Have they ever been out of the city of New York?

A. They never have.

116 Q. And where are they physically kept here in the city of New York?

A. They are kept in the Bankers' Safe Deposit vault, on the corner of Wall street and Broadway and in the safe deposit vault of

the Safe Deposit Company of New York. The Safe Deposit Company of New York I think is 140 Broadway.

117 Q. Is the express company ready and willing to exhibit any and all of these securities to the representative of the defendant in this suit?

A. Yes we are.

Mr. BAYLIES: Counsel for complainant states that if requested by the counsel for defendant he will be willing to arrange for a physical exhibition of and examination of the securities which go to make up the various investments as to which the witness has just testified as being in the hands of the express company on the first days of April, 1898, 1899 and 1900.

118 Q. Please state what the company did with those investments during these three years as to which you have been
57 testifying?

A. The company held these as any other investments would be held and have received therefrom the usual interest and dividends accruing from time to time; all dividends which have been declared thereon; such income having been turned in to the general fund of the treasurer representing the returns from his investments.

119 Q. Have you had anything to do personally with the interest of these securities?

A. I am one of the officers of the company who have the right of access to those securities and I have personally from time to time seen them; I have personal knowledge of those securities being in the hands of the company which I have verified by an personal investigation during various times in the last three or four years.

(By Mr. MOORES:)

120 Q. You say they are there?

A. They are there. As late as September 15th I made an examination of the entire assets of the company, checking them up.

(By Mr. BAYLIES:)

121 Q. Were any of these investments being used by the express company on the 1st day of April 1898 or at any time since then in its express business?

Mr. MOORES: Objected to as calling for an opinion and not for a fact.

58 A. They were not.

122 Q. Were these investments as to which you have just been testifying held by the express company in any different way from what any ordinary individual owning them would hold them?

A. They are not; they simply represent the surplus income or results of the company from its various enterprises here which it has invested and put away the same as any other person would invest his money; it has no bearing upon the express business in any

way shape or manner,—that is in the operations of the express business in any way shape or manner.

Mr. MOORES: The last question is objected to for the same reason as before.

123 Q. You have already testified that the company has for the purpose of carrying on its business in the State of Indiana,—possesses a certain plant consisting of certain horses, wagons, safes, harnesses, office furniture, supplies and so forth. Does it possess a similar plant in other cities of the United States where it carries on its express business?

A. It does; also in Europe.

124 Q. What personal knowledge have you of the existence of these plants in these various cities?

59 A. From the yearly reports which are made to this office by its general managers and which are presented to us—by us I mean the general officers—for their inspection, and which reports are given from each inventory made on the 1st of January,—the items of personal property as held and the inventory value thereof made upon that date, showing a total of so many horses, wagons, safes, and other personal property and the total inventory value of a certain sum. This sum at the time which you speak of I should say was about $1,600,000.

125 Q. The items to which you have just been testifying are stated in the return made to the State of Indiana for the year 1900 as being of the value of $1,597,294.20. Please state whether or not that figure is correct so far as you know.

A. That figure is correct. I should have used that if I had not tried to remember the fact. That was merely my recollection. The correct figure is shown by our returns.

126 Q. What is the value of the plant owned by the company of the character of which we have just been speaking and used by it for the transaction of its express business on the 1st of April 1899?

A. $1,534,591.30.

127 Q. That is the figure stated in your return to the State

60 of *of* Indiana for that year?

A. It is.

128 Q. And what was the value stated in your return to the State of Indiana of property of that description as to which you have just testified, namely the plant actually used for the transaction of the business in 1898?

A. $1,505,738.72.

129 Q. And of that last named amount how much in value was situated in the State of Indiana?

A. I think less than $8,000. Yes, less than $8,000.

130 Q. Was that true of the year 1899 and 1900?

A. Practically the same; yes sir it is practically true of the three years.

131 Q. That the actual value of what you have termed the express

plant in use by your company in the State of Indiana for each of those three years was in the neighborhood of $8,000?

A. Yes sir, when we say express plant we mean horses, wagons, trucks, safes and office furniture.

132 Q. In most of the places where the company carries on an express business by having offices does it own the real estate where the office is or does it hire it?

A. It hires it.

133 Q. Now are any of the securities that you have specified as representing investments of the American Express Company
61 being used or have they been used during the last three years by the express company for the purpose of borrowing money on them or obtaining credit of any sort?

A. We have occasionally borrowed money from our bank but other than that we have no use for our securities in the direction that you have indicated.

134 Q. To any considerable amount?

A. As our business demands. We find at times that we are running short of cash, and possibly in some few cases we have gone to our bank and borrowed a small sum of money putting up a specific amount of securities as collateral; but these are very rare cases.

135 Q. How often has that been done in the last three years?

A. Oh I should suppose a dozen times.

136 Q. What amounts have been borrowed?

A. Not to exceed one hundred to two hundred thousand dollars.

137 Q. At any one time?

A. At any one time.

138 Q. Is the American Express Company transacting any species of business for which it needs credit in the ordinary acceptance of that term?

A. No, the American Express Company has no occasion for the use of any money or for the use of any credit in the transaction of any of the branches of its business.

62 139 Q. You said in regard to the money order business or in other items of the business other than the carriage of parcels that it will not approach in character the business that is done by some bankers. Explain what you mean by that.

A. The money is all coming in to us at all times. Our business is a cash business. We receive our charges from day to day, from transaction to transaction as it happens and in the sale of our money orders and financial paper we do not part with any obligation of the company till we receive the money. Therefore we are all the time in funds before paying out; and we have no occasion to call upon any person or any company for loans only as I have specified. It is a rare occurrence.

140 Q. What has been the market value of your shares during the past three years? Take it on the 1st day of April 1898 and the 1st of April 1899 and the 1st of April 1900.

A. The market value of each interest on the 1st of April 1898 was

$120; on the first day of April 1899 it was $140 for each interest; on the first of April 1900 it was $140 for each interest.

141 Q. Have you in each of the returns that you have made to the State of Indiana for the three years specified given the length of the lines or routes over which your company transports

63 freight or other express matter?

A. We have.

142 Q. Turning to the return for the year 1898 what was the total length of the lines or route over which you transported freight matter?

Mr. MOORES: Note an objection to that question because it calls for an opinion.

A. 163,063 miles.

143 Q. How much of that length of line was outside of the State of Indiana?

A. 160,849 and $\frac{96}{100}$ miles.

144 Q. What were the figures as to the length of your lines or route over which you transport merchandise, express or freight matter as stated by you in the return for the year 1899?

A. 163,020 miles.

145 Q. And of these lines or routes how much was outside of the State of Indiana?

A. 160,806 and $\frac{96}{100}$ miles.

146 Q. And in the year 1900 what was the total length of your lines or routes as specified in the return for that year?

A. 162,619 and $\frac{17}{100}$ miles.

147 Q. Of this how much of these lines or routes were outside the State of Indiana?

64 A. 160,374 and $\frac{12}{100}$ miles.

148 Q. What was the total mileage in the year 1900 in the State of Indiana?

A. 2,245 and $\frac{5}{100}$ miles.

149 Q. Have you included in these figures that you have given the mileage for certain routes where the National Express Company transports express matter as agent of and for account of the American Express Company?

A. It has been included in the returns.

150 Q. And in this total of 162,619 and $\frac{17}{100}$ miles for the year 1900 how many miles were included as mileage over which the National Express Company transports merchandise for account of your company?

A. 4,373 and $\frac{88}{100}$ miles.

151 Q. In the mileage outside of the State of Indiana which you have returned as 160,347 and $\frac{12}{100}$ miles for the year 1900 how many miles were miles over which the National Express Company so transported express matter as agent of and for account of the American Express Company?

A. 3,959, and $\frac{18}{100}$ miles.

152 Q. How is this length of lines or routes over which the

American Express Company transports merchandise, freight or express matter as specified in the returns that you have made to the State of Indiana, made up?

A. It is made up of railroad, steam boat and steam ship lines which are occupied by this company's business, or over
65 which we have handled the merchandise and goods carried by this company.

(By Mr. MOORES:)

153 Q. And also stage lines?

A. Well I don't think we have got any stage lines in here. Those lines I should think are confined purely to railroad and steam boat and steam ship lines.

(By Mr. BAYLIES:)

154 Q. Can you state roughly about what the mileage is on these various lines that go to make up this total; I mean how much railroad and how much steam boat?

A. I should say that in round numbers of this mileage there was in the neighborhood of 41,000 miles of railroad mileage, and that the balance between that and the amount named would represent steam boat and steam ship lines and routes.

155 Q. Why did the American Express Company change the statement that it made to the authorities in Indiana as to mileage very materially in 1898 from the statement it has made in that respect in the year 1897?

A. The reason for that was that prior to the year 1897 the American Express Company had no organization in any foreign country. We simply took such foreign business as was brought to us and handed it over to a local European express company in New York or Boston, and there it ended so far as we were concerned. But in 1897 we went to Europe, considering it was best for our busi-
66 ness to do so, and in lieu of the methods in vogue prior to that time we established our own offices (what we call exclusive offices) in the cities of London, Liverpool, Paris, and Southampton; and during the subsequent years, 1898, and 1899, at Havre, Hamburg, and Bremen, and also arranged at some of the other seaboard towns for sub-agents of the company to handle business destined to Europe and other places throughout the world. Therefore, having our own line after that date between this country and these foreign places over regularly established routes and under arrangements which we had made with the steamship companies over whose lines our business passed, we then felt that it was proper for us to include in the mileage for the next year and subsequent years the mileage of the steam ship routes over which our business was transported.

156 Q. Have you in these figures of mileage included any mileage in the interior of any foreign or European country.

A. No; the mileage includes purely the steamship mileage from one sea-port to another sea-port wherever it may be located over

which such lines or routes handle our business. Neither have we included in this statement any railroad mileage from any for-
67 eign point on the sea-board to any interior point, which I think we would have been justified in doing.

157 Q. What is the character of the offices that you have established at these foreign ports that you have named? How do they compare with similar offices that your company maintains at various points in the United States?

A. Precisely the same. Our offices at those points that I have named are precisely the same as the offices which are located in New York, or Chicago, or Boston, or Detroit. We have our own organization; we have our own exclusive employés, mostly Americans; we pay our own rent; we have our own horses and wagons. We maintain the same personal property as spoken of in the nature of express plant and we handle our business on through way-bills both going and coming; we issue our through receipt covering the transaction; and as I said the operations of the carriage of the package would be precisely the same from New York to London as it would be from Chicago to New York.

158 Q. So that when an express package is delivered to your company here and it is destined for Paris I understand you to testify that it is received at Paris by one of your own exclusively employed employés?

A. Yes and the delivery made by the company through its own wagon service.

159 Q. Just as it would be if that package was sent from New York to Chicago and was received in Chicago by your own employés?

68 A. Precisely.

160 Q. Is it a fact that you take parcels destined for interior points in Europe which you have not specified as points where you maintain agencies?

A. Yes sir and those packages are forwarded from here to one of these various offices of the company and then we turn them over at that point for local transportation.

161 Q. What sort of receipts does your company issue for packages carried from this country to points in Europe? Are they through receipts to destination?

A. They are through receipts to destination in the sense that packages carried from our office should be delivered to the point of destination. Packages destined to points where we do not maintain offices would be subject to the conditions of the receipt as to transfer to a connecting company.

162 Q. And during the time that the package is on its way, say from New York to Paris, in whose control is it?

A. The package is in our control so far as it is in a receptacle which is recognized as belonging to the American Express Company,—what we call a packed-parcel. We send most of our business in a packed parcel; it goes into it and the parcel is marked with the company's name. It is in our control, so far as that is con-

cerned until it reaches the sea-port when it is turned over
69 to our agency.

163 Q. The sea-port on the European side?

A. Yes the European sea-port.

164 Q. Please state whether the various steamship companies that carry your express matter from this company to Europe provide special places on board for handling your express matter?

A. The express matter is all placed in a separate and distinct part of the ship. We are given preference over all other shipments; that is our packages are held until the cargo is put in and then placed where they will come out quickest. That is the general condition. We have very many cases where our parcels, certain valuable parcels are placed directly in charge of the purser of the ship and placed in what he calls his strong-room; and very many packages are handled in that way.

165 Q. Please state whether or not in the conduct of your express business in this country you always send your own paid employés with the express matter?

A. Not in all cases. In the majority of cases on the trunk lines of railroads we do; but in very many, the largest proportion in number, and mileage of the railroads, the express matter is handled
by the employés of the railroad company like the baggage-
70 master, who acts as guard for it, and to whom we pay compensation for services;

166 Q. ——. F. F. F.

A. ——.

167 Q. These agencies in Europe, at Hamburg and Bramen, have been established since the first of October, 1898?

A. Yes sir and also one at Havre which has been established within the last year.

168 Q. Please state whether or not the foreign express business, I mean the business between the United States and European countries and other foreign countries, is carried on by any other of the great express companies of the United States on the lines which you have just stated the American Express Company is using in the transaction of that business?

A. No, it is not. The other express companies, such as the Adams, the United States and the Wells Fargo, forward their business to an agency, whoever he might be,—some English or French or German firm, who receives their business for them and distributes it. They have nothing further to do than put it on
71 board the ship consigned to their European agent and that is where their responsibility ceases. I perhaps should qualify that by saying that I believe the Wells Fargo Company have maintained at London for a good many years something in the nature of an agency which is more or less a part of their business; but with that I am no familiar in detail, but their methods are as I said the same as the Adams and the United States; the business is passed along to the agent who receives it on the other side of the water.

169 Q. Can you point out any points of difference between the express routes of your company in the United States and the express routes of your company outside of the United States, such as you have just described,—any different method in handling the goods or in any other particular?

A. Well in this country of course we have as a rule our own employés, (messengers,) who are in the car when the goods are put in and who remain with the goods until they are taken out of the car, with the exception as I have mentioned that in very many of the railroad lines it is a railroad employé who acts for us. In connection with the handling of our business in Europe, or to Europe and from Europe, the express company has no direct messenger who accompanies the goods during its passage on board the ship. The same condition is also true of very many steam boat lines

72 upon which we operate in the United States. It is not necessary to have a messenger because transportation by water is separate and distinct in its nature from transportation by rail; the ship goes on the water and there are no way stations and no delivery of the goods at way-stations, and there are no occasions for men to go through from origin to destination.

170 Q. Can you specify any of such routes in the United States?

A. I can't give the names of them all; it happens in a good many cases where there are through routes by water,—say in going from New York city, to Albany, New York; the goods are put in charge of the purser as in the case of an ocean steamship company and the goods are then taken out at Albany, at destination, by our own employés and there delivered.

171 Q. Well can you state any other difference between an express route on a railroad such as is used in the common acceptation of the term and the express route between New York and Liverpool other than the fact that the express company has no agency who accompanies the goods in the latter case?

A. Well it would be hard to say as to that.

172 Q. If there is any other difference please state.

A. There is none that I am aware of. There is nothing further that I could state.

73 173 Q. On arrival at destination the goods are treated in the same way whether the destination happens to be Chicago or whether the destination happens to be Liverpool or Paris?

A. Precisely.

174 Q. I suppose that your company has from time to time to pay losses does it not?

A. Yes sir.

175 Q. How are those made? Out of what funds?

A. Out of the earnings of the company from its express traffic.

176 Q. The current earnings?

A. The current earnings.

177 Q. Has it ever been necessary in order to meet losses for the company to draw upon the investment account of which you have been testifying?

A. Never. We pay our losses out of our current receipts.

178 Q. And do you ever have to use any of your assets,—I am referring especially to the investments of which you have spoken,—in order to enable the company to give bonds?

A. In no way shape or manner.

179 Q. How is it in regard to the payments that you are obliged to make from time to time to the various carriers over whose roads your express matter is carried? Out of what funds are those payments made?

74 A. Those payments are made out of the current earnings of the company from handling its express traffic.

180 Q. Is it as a general rule true that the general nature of the contracts between the American Express Company and the carriers who actually carry the express matter, requires that a certain percentage of the same charge made by the express company to the consignor of the goods shall be granted by the express company to the carrier?

A. That is the general practice at the present time. If we earn one dollar we pay forty or fifty per cent. of it to the railroad company; the balance of it is used by us for paying other expenses and damage claims or any other charge that would legitimately arise in the transaction of our business.

181 Q. Are these investment securities which your company holds of any use whatever to the business carried on by your company in the State of Indiana?

Mr. MOORES: Note an objection to that question, because it calls for a conclusion.

A. I should say not the slightest.

182 Q. Supposing your company did not have any of the investments which you have testified that it does have, exceeding fifteen millions in value, could it perform its busines- as an express company in the State of Indiana as well as it now does?

75 Mr. MOORES: Objected to for the same reason.

A. It would make no difference whatever. The express business in Indiana is in no way dependent upon the fact that the treasurer of this company has fifteen millions of dollars in the treasury. We simply occupy certain lines of railroad in Indiana and we are prepared to handle such business as the people turn over to us at rates which we fix and out of which we make our profit.

Whereupon an adjournment was had until Friday, November 23, 1900, at 1.30 p. m.

76 Office of the American Express Company, No. 65 Broadway, New York city.

FRIDAY, *November* 23, 1900—1.30 p. m.

The parties met pursuant to adjournment.
Present: The same as on yesterday.

The examination of the witness, FRANCIS F. FLAGG, was resumed as follows:

Questions by EDMUND L. BAYLIES, Esq.:

183 Q. Please state what is done by the American Express Company with the earnings received from its express business transacted over the ocean routes as to which you testified yesterday.

A. The earnings from that department of our business, or as we call it the European department, are received and passed into the hands of the treasurer the same as any other earnings from any other branch of the express business transacted in this country.

184 Q. Please state whether or not it is a fact that on the 1st of April 1900 the American Express Company was the owner and in possession of actual tangible property situated outside of the
77 State of Indiana of a market value exceeding the then market value of the entire aggregate interests of the associates who are the members of that company?

A. Yes it is the fact.

185 Q. Does that appear from the return which your company made to the State of Indiana for the year 1900?

A. It does.

186 Q. On the first day of April 1898 please state what relation the actual tangible property of which the American Express Company was the owner situated outside the State of Indiana bore to the market value of the entire aggregate interests of the associates who are the members of the American Express Company?

A. They were in excess of such market value, of the shares representing the interests of the associates.

187 Q. And was the same thing true as of the 1st day of April 1899?

A. It was.

Mr. MOORES: I move to strike out the last three questions and answers on the ground that they are immaterial; but no objection is made as to the form.

Cross-examination.

Questions by MERRILL MOORES, Esq.:

188 X Q. I understand that you are the third vice-president, and a director and a member of the executive committee
78 of the American Express Company are you not?

A. That is the fact; and as such third vice-president it might

be well to say that I have the general control and management of the company's affairs.

189 X Q. About when was the property at 55 and 61 Hudson street in New York city acquired?

A. That property must have been acquired prior to 1868.

190 X Q. In whom is the record title to that property?

A. James C. Fargo, as president of the American Express Company.

191 X Q. Is that true as to all the other properties that are enumerated as real estate not used in the express business?

A. That is true with one exception; that is the property at Canal and Friend streets, Boston, which stands in the name of James C. Fargo personally as required under the laws of the State of Massachusetts. That is merely put in his name because under the statute the company could not hold it, and therefore as I say it stands in his name, James C. Fargo, personally, with an assignment from him of such holding to the company.

192 X Q. How much of the property named in this list for 1898 was acquired prior to 1868?

79 A. 55 and 61 Hudson street, New York city, 157 Hudson street, New York, 365 Broadway, New York, corner of Broome and Elm streets, New York. Those I know were acquired prior to 1868. The others I should say were acquired since that date.

193 X Q. To which of the constituent companies did the property named belong at the time of the consolidation in 1868 if you know?

Mr. BAYLIES: I object to that as irrelevant and immaterial.

A. I will say to the best of my knowledge that all of the property with the exception of 365 Broadway,——

194 X Q. (Interrupting.) Belonged to which company?

A. Belonged to the American Express Company.

195 X Q. What knowledge have you as to the circumstances under which and the purposes for which that property was acquired?

A. Which do you refer to now, all of it?

196 X Q. All of it; well I mean of course the property that belonged to the American Express Company and that was bought before 1868.

A. That goes a little beyond my recollection or rather beyond my knowledge. I can tell of course within my knowledge for
80 twenty or twenty-five years, but prior to 1868 I should not be able to answer that absolutely, that is to your satisfaction. I know the company since my connection with it has held that property as an asset and as independent entirely from its express business. It is rented the same as any other property which may be held as an investment, from which we receive the rents and which are passed into the treasury of the company.

197 X Q. If you have heard from any person or former officer, and that includes directors, of the company, any statement as to why any one of these pieces of property was purchased by the company you may state.

A. Well I couldn't answer that question for I have no knowledge personally of the reason why this company acquired that property, that is the property that was acquired earlier than 1868.

198 X Q. If you have heard from any officer or director of the company any statement as to why it was acquired, any of it, please state.

A. I have not heard of it; that is, I can give a specific answer as to some portions of it,—some portions that are mentioned on the list.

199 X Q. I mean as to that bought before 1868.

A. That I cannot answer.

200 X Q. Have you known during your connection with the company the purposes for which this property was used?

81 A. It is used as I have stated merely for the purpose of receiving an income therefrom.

201 X Q. You mean to say it has been rented all the time?

A. It has been rented from time to time; rented or not rented; but it has been rented to tenants other than the express company itself.

202 X Q. Then the pieces bought before 1868 have not been used during the pe-ior of your connection with the company for express purposes?

A. It has not been used for express purposes.

203 X Q. You may state the circumstances under which the property at 172 St. Johns place came into the possession of the company, briefly.

Mr. BAYLIES: Note an objection to that question as irrelevant and immaterial.

A. In the settlement of the defalcation of an employé.

204 X Q. About when was it acquired?

Mr. BAYLIES: The same objection.

A. I should say ten years ago to the best of my recollection.

205 X Q. When was the property at the corner of Maine and Erie streets, Buffalo, acquired?

Mr. BAYLIES: The same objection.

A. To the best of my recollection about eight years ago.

82 206 X Q. For what purpose was it bought?

Mr. BAYLIES: The same objection.

A. As an investment purely.

207 X Q. It has never been used for express offices or anything of that sort?

A. No.

208 X Q. For what purpose was the Exchange Street property in Buffalo bought and when?

Mr. BAYLIES: The same objection.

A. That I can not answer you fully about. It is property we have

had for a great many years and it has not been used by the company for express business during my connection with the company.

209 X Q. When was the Boston property acquired?

A. That came to us in the purchase by this company of the United States and Canada express in 1881 as one of the assets of that company.

210 X Q. What is the history of the Detroit building.

Mr. BAYLIES: Thes same objection.

A. That property is also beyond my recollection. As I say it has been one of the assets of the company for fully twenty years without being used in the express business.

83

211 X Q. Now the property at Paterson, New Jersey?

A. Th-t is the same; that came to us as an asset in connection with the old Delaware, Lackawanna and Western express.

212 X Q. Now since the consolidation of 1868 what companies have been acquired or absorbed by the American Express Company?

Mr. BAYLIES: That is objected to as irrelevant and immaterial.

A. The Eastern Express Company of New England, the United States and Canada Express Company of New England, and through purchase of the majority of the shares the National Express Company of New York. Now let me say: Is it your idea to go beyond these large companies? Of course we have purchased several small express lines.

213 X Q. Local concerns?

A. Yes, local lines which are not express companies at all. I don't think you care for that.

214 X Q. I don't care for them.

A. And I should add possibly to that the Adirondack Express Company which appears in our list of securities.

215 X Q. In article ten of the articles of association the business and scope of the American Express Company is defined. From your knowledge of the business of the company that definition

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covers the business transacted by the company does it not?

A. Well I should answer that yes, with the other articles of association as that may define the powers and scope of the company and its board of directors.

216 X Q. You have spoken of the business of transporting or transferring money as done by the company. In how many and in what ways is money transferred or transported by your company?

A. In the first place by the actual receipt of the actual money from a consignor, being a bank, or broker, or an individual, and the handling of that individual money by the company over its lines and the delivery of that individual, particular money to the consignee. In the second place by the receipt of money from a consignor to be transported by telegraph, the delivery of the money being made by our agent at the point of destination on the receipt of such telegraphic advice. The third way, by the receipt of money from a remitter and the issuing therefor the company's money order

or check and the transporting of such money to pay the same at the point of payment.

217 X Q. Are your accounts so kept that you can state approximately the amount of money thus transferred in these different classes that you have named?

A. I could not give it to you. No it would be impossible
85 for me to give you accurately the amount of money. I could give you approximately the earnings of the company from such sources.

218 X Q. I would like to know approximately how much money is physically transported by the company for its customers in the course of a year.

Mr. BAYLIES: I object to that as irrelevant and immaterial and as having nothing to do with the issues of this case.

A. I couldn't answer that question intelligently.

219 X Q. What are the receipts of the money annually for such transportation of money?

Mr. BAYLIES: Objected to for the same reason.

A. That I couldn't answer either.

220 X Q. I ask approximately.

Mr. BAYLIES: Objected to for the same reason.

A. I could say this: That I should suppose that the receipts of the company for the handling of this particular business might represent ten per cent. of its total earnings from its express business.

221 X Q. Is as much as a thousand millions of dollars transported physically in this way during the course of a year by your company?

86 Mr. BAYLIES: Objected to on the same grounds.

A. I couldn't answer that question. You see we keep no records of that whatever, of the amount of money represented by the packages which we handle. Our records would only show the earnings derived therefrom. If a package is brought in today valued at $100,000 or containing $100,000 in currency we simply show upon our way-bill and have our records drawn up accordingly the earnings for the transportation of that $100,000.

222 X Q. You keep no record of the amount of money transported in that way?

Mr. BAYLIES: The same objection.

A. With the exception of telegraphic transfers; that is kept separate and reported separately.

223 X Q. Is as much as a hundred millions in money transported annually by your company in that way?

Mr. BAYLIES: The same objection.

A. It would be merely guess work for me to answer that question. It would be impossible for me to state by reason of the fact that we keep no record of it.

224 X Q. What is your best judgment?

Mr. BAYLIES: Objected to for the same reasons.

A. Well as I say it would be pure guess work and I
87 couldn't answer the question with any degree of accuracy.

225 X Q. Well what would be a safe minimum in your judgment of the amount of money transported by your company in a year?

Mr. BAYLIES: The same objection.

A. It would exceed I should suppose fifty millions.

226 X Q. It would exceed fifty millions?

Mr. BAYLIES: Objected to upon the same grounds.

A. Yes it would. It might be a great deal more than that. I wouldn't care of course to make a statement to that effect.

227 X Q. You are a member of the company of course?

A. Yes sir.

228 X Q. You know as a matter of fact whether the company treats money accepted in this way for transportation as insured by the company?

Mr. BAYLIES: Objected to as irrelevant and immaterial.

A. We assume the risk of loss which would naturally be insurance of such value as may be specified or declared by the consignor.

229 X Q. The practice of the company is to pay proved losses of money accepted for shipment is it not.

A. So far as it is declared—as the value may be declared.
88 Beyond that of course we assume no risk.

230 X Q. But your contracts for shipment of money generally contemplate the payment of the amount declared in case of loss?

A. We always pay the amount declared, the declared value in the event the loss is proven to have been the result of the negligence of this company or of its employés.

231 X Q. And you say that a safe minimum of the declared value of ship nents of money would probably be fifty millions in one year?

Mr. BAYDIES: Objected to as irrelevant and immaterial.

A. Of money? The actual physical handling of money you mean?

232 X Q. Yes.

A. Not our money order business?

233 X Q. No.

A. I should be perfectly safe in saying that it would be at least fifty millions of dollars.

234 X Q. And it might run to ten times that amount?

Mr. BAYLIES: Objected to for the same reasons.

A. Oh no, not ten times; it might exceed that by ten per cent. or twenty per cent.; but as I say it is impossible for me to make
89 any statement which would be at all accurate?

235 X Q. Approximately how much money is received annually to be transported by telegraph?

Mr. BAYLIES: Objected to on the same ground.

A. I should say about one million dollars in the United States and Canada. There is a great deal more than that in connection with our European business.

236 X Q. As to money transmitted in the third class that you have described, state whether a large amount of money is so carried.

A. In connection with this branch of our business we receive during the year a large amount of money.

237 X Q. Running into the millions?

A. Running into the millions.

238 X Q. For which also the company customarily holds itself liable,—for the safe delivery of which also the company holds itself liable to its customer.

A. For the proper payment of which we hold ourselves responsible.

239 X Q. All of this business of which we have spoken relates to the transmission of money in the United States and Canada and not to foreign transportation?

A. My answer covers the domestic business of the company as we call it.

90 240 X Q. And the domestic business includes Canada?

A. The United States and Canada.

241 X Q. As to money transferred or transported between the United States and Canada on the one hand and foreign countries, how does the business compare with the money handled in the United States and Canada?

A. It is about the same. It is fully the same.

242 X Q. Your company maintains a system by which checks may be purchased at a very great many of your offices or agencies in the United States which can be cashed in various parts of Europe and Africa and South America?

A. Yes.

243 X Q. Do you do any Asiatic business?

A. Everywhere: all over the world.

244 X Q. For the purpose of transacting this business is the maintenance of depositaries of money required anywhere outside of the city of New York?

A. We sell our paper which we call travelers' checks, foreign drafts, to our customers for cash, which checks or drafts are drawn upon all parts of the world outside of the United States. We take that cash that we receive from our customers and transmit it to the foreign countries for the purpose of redeeming our paper as it is presented. That is, we take a man's money when he gives it
91 to us, and we put it into London or we put it into Australia, or we put it into St. Petersburg, or we put it into Cairo, or we

put it into Japan for the purpose of meeting our check made against it.

245 X Q. Now if a man in Indianapolis purchased travelers' checks to the amount of two or three thousand dollars, which may be cashed in any part of the civilized world, it becomes necessary does it not, that you should maintain deposits in at least one place in every civilized country to meet those checks?

A. It is not necessary to make a deposit except at the principal points, primarily at our own offices. At the majority of places where our checks are presented for payment the banks are willing under an arrangement made with us to cash this paper and to transmit it for redemption to some one or two or three points in Europe where we have placed the money in the hands of either our own agent or our bankers abroad for the purposes of such redemption.

246 X Q. At how many places in Europe do you maintain depositaries of this character?

Mr. BAYLIES: Objected to as irrelevant and immaterial.

A. I should say twelve or fifteen.

247 X Q. How many in South America?

A. None.

92 248 X Q. How many in Africa?

A. None; these are all in Europe.

249 X Q. How many in Asia?

A. None.

250 X Q. How many in Australia?

A. None.

251 X Q. Then it is safe to say that you maintain none outside of the United States and Europe?

A. We maintain none outside of continental Europe. We have our own agencies where we keep our funds in Europe. I have already testified as to the points. We have a bank where we make deposits, where we deposit the funds of our customers to cash our obligations issued to them in Great Britain, in France, in Germany, in Italy, in Scandinavia, Belgium, Russia, and Holland; possibly in one or two other countries in Europe.

252 X Q. Do you think it would be possible for an express company to be established which could transact this business without other property than the tangible property which you have described, as safes, horses and wagons and other physical property used in the transportation of express matter?

A. I do. I think that the American Express Company, with its reputation and high credit, and long standing existence could,

93 and has as a matter of fact undertaken this business regardless of any known assets of the company. In fact no one has any idea or any knowledge, public knowledge, of this company's financial condition. Our general reputation and credit has enabled us to enter into this business.

253 X Q. What amount of stocks and bonds and other valuables

do you annually carry backward and forward between the United States and Canada on the one hand and foreign countries?

A. I couldn't give you the amount I will state in a general way it runs up into some large sums.

254 X Q. Well it is largely in excess of the money is it not?

A. Oh yes; we handle very little money between this country and Europe. Of course we have more or less money carried between here and Canada. We treat Canada and the United States as one; that is what we call our domestic business.

255 X Q. Your foreign business in the carriage of stocks and bonds and other valuables largely exceeds one hundred millions of dollars annually?

A. Oh no; the handling of securities between this country and Europe wouldn't come any where near that,—you are speaking now of securities, bonds and stocks?

256 X Q. Yes.

A. It would be a very small item as compared with the amount handled by us in the United States. The bulk of our business

94 in Europe is the transportation of express matter absolutely. That is, express matter in the nature of shipments, whether it is a package or a case or one hundred cases. The financial part of our European business is handled, the bulk of it, through the medium of our traveler's checks and foreign checks which as I say merely represents the money which is given to us by the remitter for which we issue him a receipt in the nature of a negotiable piece of paper, which he sends or takes to Europe and which we immediately cover by forwarding his money there.

257 X Q. The domestic transportation of valuables, including stocks and bonds, jewelry and precious stones, and other articles of value enormously exceeds the capital stock of the company does it not?

A. I should say it did.

258 X Q. I mean annually.

A. You mean the value of the property which we handle?

259 X Q. The declared value?

A. Yes.

260 X Q. And for all of this you guarantee the delivery of the declared value?

A. We hold ourselves responsible for the value of the package, for the declared value of the package, subject to the conditions of our receipt of course.

261 X Q. With every common carrier with whom you have dealings you have written contracts?

95 A. With ninety-nine per cent. of them.

262 X Q. What proportion of those written contracts are secured by a bond or other guaranty?

A. None of them.

263 — Q. None of them?

A. None of them.

264 X Q. They all depend upon the credit of the American Express Company?

A. We make a contract with a railroad company for the handling of our business over the line, for which we pay the railroad company on the basis of weight carried or a percentage, which is the general rule, of the earnings which we receive from the handling of such business, the railroad company supplying us with all necessary facilities in the way of cars, station platforms, and locomotive power of course for the transportation of it.

265 X Q. And you give them no other guaranty than the name of the company for the contract?

A. That is all they receive.

266 X Q. Are any bonds ever furnished to shippers or to the Government by the company for shipments made in bond?

A. Oh yes we have what we call immediate transportation and common carriers' bonds at the ports of Boston and New York. The company gives to the Government a bond in New York for $500,000; in Boston as I recall it for $250,000; with sureties thereon
96 which are usually personal sureties.

267 X Q. Are they always personal sureties?

A. In the majority of cases they are. There are one or two bonds that we issue with corporate surety. That merely is a bond that we shall take those goods which are the property of the customs officers at least so far as the duties are concerned,—that we shall take those goods from the port of New York and deliver them to the customs officers as agents of the Government at such port of entry as may have been so designated by the Government.

268 X Q. What is the amount approximately of the bonds given by your company to the Government?

A. As I say it is $500,000 in New York and $250,000 in Boston, with a surety thereunder of twice the amount.

(By Mr. BAYLIES:)

269 X Q. Are not they continuing bonds?

A. They are for all time. Is that what you mean?

270 X Q. You are not constantly giving new bonds?

A. Oh no.

(By Mr. MOORES:)

271 X Q. What is the aggregate amount of all these bonds that you give the Government?

272 X Q. It is in the neighborhood of $750,000.

273 X Q. You don't give any bonds except at those two places?

A. Oh no, we don't give any other bonds; at any other place except New York and Boston.

274 X Q. Do you give bonds in Canada to the Government?
97 A. No.

275 X Q. How are your sureties indemnified if at all?

A. They are indemnified by a bond of indemnity; in a personal way by a bond of indemnity given by the company to the surety.

276 X Q. So that the sureties' protection is simply the name of the company then?

A. Yes, but as a matter of fact those bonds are purely *pro forma* affairs.

277 X Q. Do you give any bonds to shippers?

A. No.

278 X Q. Never?

A. Not for anything; not for any purpose.

279 X Q. Do you give any bonds to any foreign governments?

A. No.

280 X Q. Or other guaranty?

A. No guaranty and no bond.

281 X Q. What is your average annual loss and damage account?

A. I should say about $30,000. If you prefer I will consult our records and give you what our actual loss and damage accounts were for the last three or four years.

(At the close of the cross-examination the witness having in the mean time consulted the records made the following additional statement:)

The average losses from all sources for the last five years from 1895 to 1899 inclusive have been a little over $57,000 per year.

98 282 X Q. Have you any knowledge as to whether it was originally contemplated by the organizers of the company that any large portion of the shares of stock should be paid up?

Mr. BAYLIES: Objected to as irrelevant and immaterial.

A. So far as my knowledge goes the shares of stock were all paid up.

283 X Q. Were all paid up?

A. In this merger, in the merger in 1868.

284 X Q. Well, with old shares simply?

A. Yes.

285 X Q. But the shares originally issued by the parent companies I ask about.

A. I can not answer that question.

286 X Q. You have no knowledge as to whether this money invested in stock and bonds of which you have testified was the accumulation of years or was derived originally from the payment of shares of stock as the original capital of the company?

A. It was from both sources.

287 X Q. A portion of it represents then to your knowledge money paid in as the capital of the company?

A. Yes, sir.

288 X Q. Have you any idea what proportion is so represented?

99 A. I should say that at least five million three hundred thousand dollars specified in the articles of association.

289 X Q. Article eight of the articles of association shows that the

shares are assessable. For what purpose have assessments been made within your knowledge if any have been made?

A. There have been no assessments made within my knowledge.

290 X Q. Do you know the purpose of providing for assessments in the articles of association?

A. I presume it was for the purpose of enabling the company to make good any debts or any deficits which might occur in the company's affairs. Now I don't know of my own knowledge. That is merely an inference.

291 X Q. Do you know by whom these articles of associations were drawn? Was it Sherman Rogers?

A. I couldn't tell you.

292 X Q. For what purpose was the portion of article 9 inserted if you know or have ever heard from an officer or employé of the company, which provides that: "It is expressly agreed and declared as a condition precedent to any claim to be made by any shareholder, or by any one claiming any right or interest in any shares or in the joint property of this company, or in any gains, profits or losses thereof, that no claim shall be made to withdraw any part of the capital or of its increase or profits, or demand any account in relation thereto,
or to make any claim whatever on this company, or its prop-
100 erty, otherwise than according to those articles, except in case of manifest or intentional fraud in the directors." What was the purpose of that clause?

A. That goes beyond my knowledge. I assume it is a general condition which might apply to any partnership.

293 X Q. The company as I understand, notwithstanding the authority to own railway cars, steamboats and vessels, does not in point of fact own or control the means of transportation employed?

A. We have no direct control over the means of transportation other than is covered by the contracts which we may have with the various transportation companies. We have no ownership. We neither control nor have ownership.

294 X Q. What is the present size of the directory?

A. We have ten members.

295 X Q. What if you know was the purpose of inserting the provision in article 16 to the effect that "it is expressly understood and provided that no director shall use or employ the money, credit or name of this company otherwise than in its legitimate business."

A. That I imagine was simply a precaution which any association of individuals would make, in order to protect themselves against any action of their co-associates,—any illegitimate action of their co-associates.

296 X Q. Why is it provided in the articles of association
101 in article 16, if you know or have heard from any officer or employé of the company that "no dividend shall be made so as to reduce the substantial assets of this company below the value of five million, three hundred thousand dollars, of which at least twenty five per cent. shall be in cash or available cash securities"?

Mr. BAYLIES: Objected to as irrelevant and immaterial.

A. I have no personal knowledge as to that.

297 X Q. As a matter of fact so far as you have knowledge the substantial assets of the company in cash or in securities readily convertible into cash, have never been below the amount named?

A. So far as my knowledge goes they have never been less than that.

298 X Q. In your recollection have they ever been materially less than they are at present?

A. They have been very much less.

299 X Q. In your recollection have they ever been below ten millions?

A. I say they have been less than ten millions; as to the exact amount I should not be able to state specifically.

300 X Q. What is your best recollection as to the minimum?

102 Mr. BAYLIES: Objected to as irrelevant and immaterial.

A. I should say that they might have been as low as eight millions to the best of my knowledge.

301 X Q. For what purpose has this amount of stocks and bonds been maintained by the company so far as you know?

A. There is no specific purpose for which they are held by the company. They have simply been held by the company as investments made from time to time of the surplus income which may have been received or may have been accumulated over and above its dividends and liabilities, debts and so forth. We have been in the course of our business fortunate enough at various times to have accumulated or had more than the absolute necessities; that is to say the difference between our receipts and expenses, less our dividends, has left us certain sums of money from year to year which we have taken and invested the same as any other investment would be taken and held and invested by any other individual or partnership or concern.

302 X Q. It is a fact that continuously since 1868 the articles have provided for the maintenance of a fund of that sort is it not?

A. That is a fact.

303 X Q. And substantially as is provided in that portion
103 of article 16, on page 15, which I will read to you: "Provided, however, and it is hereby declared, that said directors shall not pay dividends on any fractional part of shares in this company; neither shall any dividends be made so as to reduce the substantial assets of this company below the value of five million, three hundred thousand dollars, of which at least twenty-five per cent. shall be in cash or in available cash securities and the balance thereof invested in real estate, equipments and outfit. * * * They are also authorized to invest the assets of this company in real estate, or in equipment or outfit, or in such stocks, bonds, mortgages, notes or other securities as may be deemed desirable for purpose of investment, or be deemed conducive to the furtherance of the business of the company; and may from time to time sell and dispose of any of such investments, and re-invest the proceeds

thereof, and may anticipate the sale of any of such investments, by the hypothication thereof to secure the purchase money of any other of such above-named securities as the said board may cho-se to purchase upon the credit of this company, and such purchases and sales may include the stock of this company: The intention hereof being to give to said board full authority for investment, in its dis-
104 cretion, of all the moneys of this company, with power to purchase any securities upon credit if deemed advisable and to hypothicate at any time any or all of its securities in maintenance of such credit." Now you say that has been substantially in there since 1868?

A. Yes to a more or less degree.

304 X Q. Now do you know anything to the contrary of the fact that that provision may have been in the articles since the original organization of the company?

A. I can not speak as to that. I merely can testify of course as to the present articles of association.

305 X Q. You don't know that that provision was not in there when the company was first organized?

A. That I don't know. I should say that it was not. I should say so far as my knowledge goes that was an article that was incorporated in what we call the articles of merger and consoldiation in 1868.

306 X Q. For what purpose was this inserted if you know: "Said board may also subscribe in the name of this company for stock or bonds of any railroad in process of construction, or of any other uncompleted enterprise, when believed to be in furtherance of the business interest of this company"?

Mr. BAYLIES: Objected to as irrelevant and immaterial.

A. I don't know that. Except that I might add of course
105 it was to give general authority to the directors to enable them to transact its business.

307 X Q. Now as to the stocks and bonds exhibited with "Exhibit No. Three" do you know which of those held on November 25, 1868, came from the American, and which from the Merchant's Union Express Company?

A. None of them came from the Merchant's Union Express Company.

308 X Q. The purchase of 38,481 shares in the American Express Company was made under the provision in the articles of association which have been exhibited to you, was it not?

A. The purchase of those shares was made in accordance with the authority conferred on the directors by the articles of association.

309 X Q. Now what is the Merchants' Despatch Transportation Company?

A. The Merchants' Despatch Transportation Company is a fast freight line which operates over the so-called Vanderbilt system and in other directions.

310 X Q. Does its office have any connection with the main offices of your company in this city?

A. Oh no, it is a separate and distinct organization; it is a separate and distinct institution, having its own officers, its own board of directors, its own shareholders; entirely separate and distinct
106 from the American Express Company. It was organized in 1871 and is the owner, in connection with the capital stock which is represented,—or rather the capital which is represented by the shares issued,—of refrigerator and freight cars. It acts as the agents of the railroad companies for the soliciting of heavy freight.

311 X Q. Now what is the total number of the shares of stock in that company if you know?

A. The total number of shares, the authorized number of shares is five millions;—fifty thousand shares. It has issued about forty-nine thousand and odd shares of that amount. Now of course I am giving you this information from my knowledge as an officer of the Merchants' Despatch Transportation Company.

312 X Q. What proportion of the shares of stock in the Merchants' Despatch Transportation Company is owned by the officers and members of the American Express Company outside of the amount owned by the American Express Company?

Mr. Baylies: I object to that as irrelevant and immaterial; and I suggest that you are not obliged to answer that, Mr. Flagg.

(The question was not answered.)

313 X Q. What is the Inter-Colonial Express Company?

A. That is a Canadian express company operating over the Inter-Colonial railroad in New Brunswick.

107 314 X Q. Is it a company of small or large capital?

A. It is of small capital. We own one-third. It has one thousand shares. We own one third, which came to us,—as one of the assets of the old Eastern Express Company, in the purchase of that concern.

315 X Q. And you have still facilities with that company for the transportation of express matter by it have you?

A. We have no express connection with it whatever. The Inter-Colonial Express Company's routes connect only with the Canadian express. We have no connection with it whatever. That came to us as an asset of the old Eastern Express Company when we purchased it in 1880, or 1881.

316 X Q. 1884 I guess it must have been, as it shows on this statement February 21st, 1884.

A. That may be. It came to us any way in the purchase of the Eastern Express Company.

317 X Q. Do you have any contract with the Michigan Central for the shipment of express matter?

A. Yes sir.

318 X Q. With the Chicago and Northwestern?

A. We do.

319 X Q. With the Delaware and Hudson Canal Company?

A. We do not.

320 X Q. What is the Delaware and Hudson Canal Company?

108 A. That is a line of railroad which operates from Albany, into Pennsylvania as far I think as Scranton or Wilkesbarre and running also into some few points in New Jersey.

321 X Q. And running north from Albany?

A. Yes running north from Albany to Montreal.

322 X Q. Have you at any time since April 21st, 1891 had any contract with them for the carriage of express matter?

A. The American Express Company has not.

323 X Q. Has the National Express Company?

A. The National Express Company has a contract.

324 X Q. What is the Adirondack Express Company?

A. That is a little express that runs into the Adirondack woods. I don't think it is over 100 miles long.

325 X Q. And it is operated in connection with your company? You have already testified it is controlled by the American Express Company.

A. Well we have eight hundred shares I think out of one thousand.

326 X Q. And in that territory in which they operate they carry your express matter, and beyond their limits you carry theirs; you interchange business?

A. We interchange business with the Adirondack Express Company, but as I say it is only a small affair, operated during the summer months.

109 327 X Q. Have you a contract with the Boston and Maine railroad?

A. We have.

328 X Q. Has that contract been in existence continuously since April 25th, 1893?

A. In 1898 we made that purchase.

329 X Q. Since the date of your purchase?

A. Oh yes, and prior thereto.

330 X Q. Have you a contract with the New York Central and Hudson River Railroad Company?

A. We have and have had for the last forty years.

331 X Q. How was the stock of the Wickes Refrigerator Car Company acquired in 1894?

A. That came to us for a debt. It was collateral on a loan we made.

332 X Q. Is the Bangor and Aroostook Railroad Company an existing railroad company?

A. It is.

333 X Q. Have you a contract with it?

A. We have.

334 X Q. The National Express Company is practically owned as I understand from your evidence in chief by this company?

A. It is.

335 X Q. What is Jackson's express?

A. That is a local express running from Boston to Lawrence and Lowell.

110 336 X Q. And you have exchanged business since 1891?

A. Oh yes, but it is a mere local express that runs up there into those suburban towns. It is of no consequence at all.

337 X Q. How did you acquire the interest in the United States hotel?

A. That I can not tell you. I presume it was from some debt. I presume it was from a debt owing to the company.

338 X Q. What is the Milwaukee and Lake Winnebago railroad.

A. That I understand to be a part of the system of the Wisconsin Central, under the new organization.

339 X Q. Have you a contract with it?

A. We have none directly. It is in the name of the Wisconsin Central.

340 X Q. You have had with the Milwauke- and Lake Winnebago Railroad Company?

A. As part of the system, yes sir.

341 X Q. What is the Dakota Central railroad?

A. The Dakota Central railroad at the present time is a division of the Chicago Northwestern railroad. At the time of the purchase in 1884 it was an independent line of railroad running through some part of Dakota.

342 X Q. Had you at that time a contract with that road?

A. I assume we had.

343 X Q. You have a contract with the Cincinnati, In-

111 dianapolis, Chicago and St. Louis Railroad Company?

A. Yes and have had for a great many years under the previous name of the Big Four road as it was called.

344 X Q. And you have at various times owned other stocks and bonds of the constituent companies, have you not, of the old Indianapolis, Cincinnati, and La Fayatte, and the Indianapolis and St. Louis?

A. No these securities are the only ones: the ones mentioned here in this list which you see we acquired in 1886 are the only ones.

345 X Q. What is the New York and Northern railroad?

A. It is now a division of the New York Central and Hudson River Railroad Company, but at the date of the purchase by us it was an independent competative line, running from New York city to Yonkers.

346 X Q. Have you had a contract with that road?

A. We had a contract with that road.

347 X Q. What is the Morris and Essex railroad?

A. That is a branch or division of the Delaware and Lackawan-a railroad.

348 X Q. Have you had a contract with it?

A. We never had a contract with it?

349 X Q. Nor with the Morris and Essex?

A. Nor with the Morris and Essex.

350 X Q. What is the Kalamazoo, Allegan and Grand Rapids railroad?

112 A. That is at present a division of the Lake Shore railroad. At the date of our buying the bonds I think it was an independent line. That has been acquired since then by the Lake Shore road.

351 X Q. You had a contract with it?

A. I assume that we did at that date.

352 X Q. The Lehigh Valley you have no contract with?

A. That is the terminal of the Lehigh Valley railroad.

353 X Q. Which terminal is it?

A. It is the terminal.

354 X Q. The Pittsburgh, McKeesport and Youghiogheny?

A. That I think is now a part of the Lake Shore railroad.

355 X Q. With which you have a contract?

A. With which we have a contract jointly with the United States Express Company.

356 X Q. Now the Chicago and Western Indiana is a terminal road is it?

A. That I can not say. I have no knowledge of that.

357 X Q. The Toledo, St. Louis and Kansas City Railroad Company you have a contract with have you not?

A. In the name of the National Express Company.

358 X Q. How about the Michigan Central?

A. That we have already covered in the shares, when you were enquiring about the shares.

359 X Q. Now the St. Paul and Northern Pacific is a ter-

113 minal road?

A. That is a terminal road which we do not have any contract with nor with the Northern Pacific.

360 X Q. The Central Railroad of New Jersey have you had a contract with it?

A. We have not. That is operated by the United States Express Company.

361 X Q. What is the Long Dock Company?

A. As I understand it it is the terminal of the Central Railroad of New Jersey or the Pennsylvania; or by the combination of all of those roads, the Pennsylvania and the Central Railroad of New Jersey in Jersey City they control the terminal rights to wharf property; terminal rights on the Hudson river.

362 X Q. Did you prior to its consolidation with the New York Central have a contract with the West Shore road?

A. Yes; that is in the name of the National Express Company.

363 X Q. Have you had a contract with the Lake Shore?

A. We have had a contract with the Lake Short for a portion of its business; we had no direct contract with the Lake Shore railroad; the direct contract is held by the United States Express Company and under an arrangement with them we have a right to do through business over the line and to do certain local busi-

114 ness between Buffalo and Cleveland.

364 X Q. I think you testified that you had a contract with the Michigan Central?

A. We have a contract with the Michigan Central.

365 X Q. Will you prepare or cause to be prepared and filed with the examiner as Complainant's Exhibit No. 4, an itemized statement of the lines of ocean mileage claimed to be operated by your company?

A. Yes.

(The said statement was subsequently filed with the examiner, accompanying the witness's letter of date November 24, 1900, and the same is marked Complainant's Exhibit No. 4, and is in the words and figures following, that is to say:)

115 EXHIBIT No. 4.

NOVEMBER 24, 1900.

Mr. Rowland Evans, reporter U. S. courts, Gov't bldg., Indianapolis Ind.

DEAR SIR:

Suit

STATE OF INDIANA
vs.
AMERICAN EXPRESS COMPANY.

In accordance with our understanding, I enclose herewith for your information statement of this company's ocean mileage, being one of the exhibits in connection with testimony taken on twenty-third instant.

Yours truly,

(Signed) FRANCIS F. FLAGG,
Third Vice-President.

Enc.

116 *Ocean Mileage—American Express Company.*

			Miles.				Miles.
New York	to	Liverpool (2 lines)	6,106	New York	to	Bermuda	690
Do.	"	Southampton	3,100	Do.	"	Kingston	1,400
Boston	"	Liverpool	2,874	Do.	"	Colon	1,981
New York	"	London (2 lines)	6,600	Do.	"	St. Thomas	1,421
Boston	"	London (2 lines)	6,200	Do.	"	Barbadoes	1,829
New York	"	Glasgow	3,700	Do.	"	Pernambuco	3,695
Do.	"	Copenhagen	3,900	Do.	"	Rio de Janerio	4,778
Do.	"	Christiania	4,000	Do.	"	Montivedio	5,834
Do.	"	Gothenburg	4,100	Do.	"	Buenos Ayres	5,934
Do.	"	St. Petersburg	4,700	Do.	"	Aukland, N. Z.	11,578
Do.	"	Hamburg	3,500	Aukland	"	Sydney	1,284
Do.	"	Bremen	3,400	New York	"	Port of Spain	1,900
Do.	"	Rotterdam	3,400	Do.	"	Havana	1,210
Do.	"	Cape Town	7,000	Do.	"	Mexico	1,980
Do.	"	Antwerp	3,300	Do.	"	San Domingo	1,225
Do.	"	Havre	3,200	Do.	"	St. Kitts	1,500
Do.	"	Genoa	4,100	Do.	"	Demarara	1,800
		Total					123,219

117 366 X Q. I will ask you to furnish the examiner with a copy of the receipts used by the American Express Company in the transactions of its shipments of goods and money and the making of collections.

A. The same are produced.

The three receipts furnished by the witness were then marked respectively Exhibits No. 5, No. 6, and No. 7, and the same are filed herewith and are in the words and figures following to-wit:

(Here follow three receipts marked pp. 118, 119, and 120.)

121 377 X Q. What lines of river steamers, if any, have you had contracts with, in the United States?

A. I couldn't give you the names, but we have very many river and lake lines.

378 X Q. I knew you had lake lines; I was separating them so as to get the river.

A. We have lines on the Hudson river; there are a number of lines between here and Poughkeepsie, and through to Albany.

379 X Q. About how many coast lines of steamers are you sending express matter by?

A. Do you mean in the number of lines or the mileage?

380 X Q. The number of the lines will answer.

A. I should say that we have at least a dozen.

381 X Q. Coast lines? I asked about the coast lines.

A. Coast? I should suppose we had five or six.

382 X Q. With express matter transmitted by the coast lines do you send messengers?

A. In some cases we do, and in some cases we do not.

383 X Q. Is it not the usual practice to send messengers or to employ the employees of the carrier to look after your expressage?

A. It differs with certain lines.

384 X Q. I am asking about the coast lines only?

A. In most of the coast lines we either run our own messengers or we employ the purser of the steamer to take charge of our

122 packages.

385 X Q. Which practically makes him your employee?

A. Yes.

386 X Q. Is that also true of the river lines?

A. Not to the same extent. The goods are usually consigned to a certain place and are taken off when they reach the destination.

387 X Q. But they are taken off by men who travel on the boat?

A. No, by our men at the point of destination.

388 X Q. And not by one who is employed by you on the river boat?

A. No.

389 X Q. Of the lines on the lakes how many have you?

A. To the best of my knowledge and belief we have I should say six.

14340

390 X Q. Do you know whether a messenger goes with the express matter on those lines?

A. I can't say.

391 X Q. Now the coast, river and lake lines in the United States and Canada have been returned from the beginning in Indiana as a part of your mileage in the United States and Canada?

A. I think they have been.

392 X Q. There has been however no ocean mileage proper included down to the time of its mention in your returns?

A. There was no ocean mileage included down to 1898.

393 X Q. What are the two lines between New York and
123 Liverpool with whom you have contracts?

A. We have arrangements with the Cunard line and with the White Star line.

394 X Q. Between New York and London?

A. We have arrangements with the Atlantic Transport line from New York.

395 X Q. You say two lines here.

A. Well it is the Leyland line.

396 X Q. Between Boston and London?

A. Those lines have been practically consolidated, that is the Leyland line with the Wilson and Furnass's line. The conditions today are a little different from what they were when we got up that statement so as I say I am not entirely familiar with the names of these companies.

397 X Q. On any of these ocean lines did you do any way business?

A. No.

398 X Q. You are sure of that?

A. Oh yes they don't make any stops between New York and Liverpool.

399 X Q. They stop at Queenstown?

A. That is merely for passengers. Our business passes through.

400 X Q. It is all through business on nearly every one of the ocean lines?

A. Yes, through business to such sea ports. There might
124 be some lines where they will stop one two or three hours before they reach the terminal.

401 X Q. In whose charge are the goods from the time they leave the port of New York till they enter the port on the other side?

A. They are in direct charge of the steamship company, that is in charge of the purser of the steamboat company, steamship company.

Questions by Mr. BAYLIES:

402 R. Q. State under what circumstances, and more particularly than you did on your direct examination how express matter is shipped by your company between the United States and foreign ports.

A. We have arrangements and contracts with many of the steam-

ship lines between Boston and New York and foreign countries covering special rates and facilities and space which are afforded this company. In the majority of cases the goods shipped by our company are placed in a separate portion of the ship, distinct from the general cargo, being the last goods put on board, so that they will be the first goods to be taken out; and in connection with the matter we compensate various employés of the steamship
125 companies for services which they may render to us in connection with the care and handling, or facilitating the putting in or taking out of our goods at the port of origin and destination.

403 R. Q. And then you receive bills — lading from the companies?

A. These goods are forwarded under through bills of lading, issued by the steamship companies to us.

404 R. Q. And the arrangements for expediting delivery are made with the employés of the steamship companies?

A. Yes made with the employés who act for us. On the arrival of goods at destination they are taken out or rather received at the piers by the compan's own employés or by its accredited agents.

405 R. Q. I notice here in your schedule of ocean mileage that you make a claim to mileage between New York and a number of South American points. Does this mileage include the distance from New York to Liverpool and from Liverpool to those points?

A. No.

406 R. Q. How is that mileage measured?

A. The majority of those South American lines are lines that run direct from this country and where they are not, why we simply have calculated the mileage from Liverpool or from Hamburg
126 or from Bremen or Southampton where the transshipment is made to the South American ports.

407 R. Q. The mileage however does include to Cape Town?

A. No, there is a direct line running from New York to Cape Town called the South African Steamship Company.

Questions by Mr. MOORES:

408 X Q. State the number of shares held in Indiana and the number of share holders at the present time.

A. Twenty-one share-holders holding three hundred and sixty three shares or interests.

409 R. X Q. There were about that number of shareholders and shares held in Indiana at the commencement of this litigation?

A. I assume that there has been no material change.

Redirect examination continued.

Questions by Mr. BAYLIES:

410 R. Q. Is any capital required for doing the business that your company does in issuing travelers' checks?

127 Mr. MOORES: Objected to as calling for a matter of opinion.

A. No capital whatever by reason of the fact that we receive from our customer the amount of his check; that is to say if we sell a man ten thousand dollars' worth of checks he pays us ten thousand dollars.

411 R. Q. Is any capital required by your company for the transaction of the business that you do in the transmission of actual money in the shape of bills or coin?

A. Nothing more than the express plant and the services of the messengers and guards which we use in the transaction of that business. The company has a large number of valuable safes and also employs the services of messengers in the regular way and also of special messengers to guard the money while in transit; otherwise than that we require nothing more than what is afforded us by the railroad company in the use of its cars and the facilities for the transportation of the messengers and the safes and the money.

Mr. MOORES: That question and answer is objected to as incompetent and immaterial and as calling for a mere matter of opinion.

412 R. Q. Please state what risk the company assumes in actually transmitting actual money or coin and in doing this check
128 business?

A. Well the risks should be divided in two; the risk of carrying coin and actual money is the risk of loss which the company might sustain by reason of the loss of the money or coin; and in the second place as to the checks it is simply a risk which would be involved in the wrongful payment of its paper to other than the absolute payee.

413 R. Q. Now in regard to this latter risk what has been the experience of the company in the past as to whether it has sustained any losses from that cause and if so to what extent?

A. Our loss from that cause has been infinitesimal. It has been so small that it would be impossible to arrive at any definite figure.

414 R. Q. How is it in regard to losses arising from theft either from the employés of the company or direct robbery occurring where actual money or coin is being transmitted. What has been the experience of the company so long as you have known it?

A. I think it is covered by the statement which I have heretofore made in regard to the amount of the loss and damage sustained by the company in the last five years which I have stated amounts to
129 a little over $57,000. That includes loss and damage of every kind and the loss from the actual handling of money and valuables I should suppose would re-resent one-fifth per annum of this amount.

415 R. Q. What steps does your company take or has it been in the habit of taking for the last five years or longer, if the fact is such, to insure the fidelity of its employés who are charged with handling money or other articles of large value?

A. We have a system in effect which we have had in effect since 1889 of a mutual insurance of employés. We call it the surety

fund. In lieu of having our employés insured by an outside concern we have since that date allowed them to form a fund of their own which is held by us, they paying in a certain premium which is based upon the salary paid to them. From that fund losses in many cases have been taken out. Out of that fund we insure our employés or rather they insure themselves. The object of that was to save money to the employés of the company and it has been the result of saving them a great deal of money in respect to premiums paid because we return to them each year the difference between the losses charged against it and the amount which they put in.

416 R. Q. So that this insurance fund is a practical guar-
130 anty each year against any losses occurring in that year from the thefts of employés or dishonesty of any sort?

A. Yes, sir, theft, dishonesty or disregard of the company's instructions or from any cause which is opposed to the general rules of our organization.

417 R. Q. In your experience since you have known the affairs of the company has that fund always been sufficient to meet losses arising in each year from dishonesty and disregard of the company's instructions such as you have specified?

A. It has been more than sufficient because we have returned to our employés in each year a dividend of from 65 to 85 per cent. of the fund.

418 *Q. R.* In each year?

A. In each year.

419 R. Q. So that with this system of insurance in regard to the transfer and handling of valuable packages and money the only risk that the company is liable to is loss from theft from sources outside the company?

A. Yes sir that is right. We assume no risks from shipwrecks, nor do we assume any risks from acts of God, riots or insurrections.

Mr. MOORES: That question is objected to as incompetent. I move to strike out the last answer as incompetent. Answer
131 is incompetent.

420 R. Q. What steps does your company take to ascertain the character of its employés who are liable to handle these valuable packages and money?

A. No person can enter the employ of the American Express Company until he has filled out and executed what we call our "Application for situation," the form of which is such that a man must give his entire history from the time he was born up to the date of his application, all his previous occupations, his personal habits, and added to that there must be at least seven references of people who are not related to him he signs that application as presented by us, and we then before employing him investigate him from his own statements by means of the references he has given us. When he is found satisfactory the man becomes an employé of this company; not otherwise.

421 R. Q. In this statement of losses incurred by the company

during each year for the past five years, which you stated averaged some $57,000 per year, have you included losses arising from personal injuries, either sustained by the employés of the company, or which the company has caused to other individuals by the operation of its wagons?

132

A. I have.

422 R. Q. All claims for negligence against the company?

A. Of every name or nature in respect of so-called loss or damage claims.

423 R. Q. Of what place is James C. Fargo, the president of this company, a resident?

A. He is a resident of New York city.

(Witness excused.)

(S'g'd) FRANCIS F. FLAGG.

133 Office of Baker and Daniels, Ingalls block, Indianapolis.

SATURDAY, *May* 25, 1901.

The parties met.

Present: James C. Fargo, as president, etc., complainant, by Mr. Edward Daniels, solicitor; William H. Hart, auditor, etc. defendant, by Merrill Moores, assistant attorney-general, his solicitor; and Rowland Evans, special examiner.

Mr. DANIELS: The complainant offers in evidence a transcript from the proceedings of the Indiana State board of tax commissioners for the year 1898, as filed in the office of the auditor of state for the State of Indiana, containing all the proceedings of said board as therein recorded with respect to all express companies having routes or lines in the State of Indiana on April 1, 1898.

(Marked Complainant's Exhibit No. 8.)

Complainant also offers in evidence a like transcript from the recorded proceedings of the Indiana State board of tax commissioners for the year 1899, as filed in the office of the auditor of state for the State of Indiana.

(Marked Complainant's Exhibit No. 9.)

134 Complainant also offers in evidence a like transcript from the recorded proceedings of the Indiana State board of tax commissioners for the year 1900, as filed in the office of the auditor of state for the State of Indiana.

(Marked Complainant's Exhibit No. 10.)

It is stipulated by the parties that copies made by the special examiner from the proceedings of the Indiana State board of tax commissioners for the years 1898, 1899, and 1900, and introduced as Exhibits 8, 9, and 10 shall be admitted in evidence with the same force and effect as if the originals had been produced, or certified copies thereof.

Complainant also offers in evidence copies made by the special examiner of the annual returns of the American Express Company for the years 1898, 1899 and 1900, and of the National Express Com-

pany for the years 1898, 1899 and 1900, to the auditor of state for the State of Indiana; and it is stipulated and agreed that said copies shall be admitted in evidence with the same force and effect as if the originals had been produced, or certified copies thereof.

The annual returns so admitted in evidence are marked respectively, Complainant's Exhibit- No. 11, 12, 13, 14, 15 and 16.

135 And the foregoing documentary evidence so produced, being transcripts from the proceedings of the Indiana State board of tax commissioners for the years 1898, 1899 and 1900, and the annual returns of the American Express Company to the auditor of state for the State of Indiana for the years 1898, 1899 and 1900, filed respectively in the office of the auditor of State on June 4, 1898, June 1, 1899 and June 1, 1900, and the annual returns of the National Express Company to the auditor of state for the State of Indiana for the years 1898, 1899 and 1900, filed respectively in the office of the auditor of State on June 4, 1898, June 1, 1899 and June 1, 1900; being respectively Complainant's Exhibits Nos. 8, 9, 10, 11, 12, 13, 14, 15 and 16 are hereto attached, and are in the words and figures following, to-wit:

136 COMPLAINANT'S EXHIBIT No. 8.

Transcript from the Proceedings of the Indiana State Board of Tax Commissioners for the Year 1898. Rowland Evans, Special Examiner.

137 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1898, page 797.)

Third session, 1898.

INDIANAPOLIS, INDIANA,
TUESDAY, *August* 16, 1898—10 o'clock a. m.

* * * * * * *

Southern Express Company.

The following letter is read:

CHATTANOOGA, TENN., *August* 11, 1898.

Honorable State board of tax commissioners of the State of Indiana, Indianapolis, Ind.

DEAR SIRS: I received a list of the assessment and valuation, etc., etc., for the year 1898, in which the Southern Express Company is taxed for 28.47 miles, at a valuation of $100 per mile.

138 I note that the board of commissioners will meet on August 16th and continue in session for ten days, for the purpose of hearing any appeals that may be submitted for any change or modification of this assessment.

I should like to be heard upon this, either orally or by letter, and so far as I may be heard by letter will answer now.

1st. The Southern Express Company's mileage in the State of Indiana is solely on the Louisville and Nashville road, from the Indiana end of the Henderson bridge to the Evansville depot of the same road. The distance laid down on the railroad guides between Henderson and Evansville proper is only ten miles. If you will deduct whatever proportion of this is outside the State of Indiana you will see that the Southern Express Company could not have over nine miles, at the outside, in the State of Indiana.

2nd. The Southern Express Company is engaged only in interstate commerce in the State of Indiana, as we do not carry anything between any two points both of which are in Indiana. We carry nothing except between Evansville and points south of the Ohio river.

3rd. The Southern Express Company operates through the same messenger as the Adams Express Company, and in the same car, on the same trains on the Louisville & Nashville railroad, and there is simply a virtual division of the business between these two companies over that portion of the line. The Adams Express
139 Company operate the Louisville & Nashville railroad from St. Louis down to Henderson, and the Southern Express Company from Nashville to Evansville, making a lap of both companies on these nine miles, for convenience of settling, &c., instead of connecting at one or other of these points.

4th. The Pacific Express Company is assessed at $50 per mile, and the Southern Express Company is assessed at one hundred dollars per mile. I do not wish to make any argument upon the value of the Pacific Express Company's franchise in the State of Indiana, as I have no knowledge as to the extent of their business or the value of same, but under the circumstances that I have hereinbefore recited it will no doubt appear to you that the value of the Southern Express franchise must be at a minimum, and thus that the very least that could be fixed would not be too little.

While it may not be a legal argument, and might not have any influence on the minds of the board, so far as it imposes any legal obligations upon them, yet it will no doubt assist in informing you of the value of the franchise, and enable you to form judgment thereon, by my informing you that the Southern Express Company really loses money by extending its lines beyond Henderson into the city of Evansville, and there would be no business reason standing in the way of the Southern Express Company withdraw-
140 ing its service back to Henderson.

The volume of express business carried between these two points, either through or local, largely consists of matter originating in the Northwest, destined to Southern States, and merely passing through this corner of the State of Indiana.

5th. I am not advised as to the per cent. of taxation upon the proposed value of $2847. If the total of all taxes to which we might be liable on the basis of the assessment would not be over two per cent.—say $56.94 or thereabout—I would not care to make a visit to Indianapolis to argue the question.

All of which is respectfully submitted for whatever consideration you may be able to give it in this shape.

Respectfully,

C. L. LOOP,
Traffic Manager.

141 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1898, page 800.)

Third session.

INDIANAPOLIS, INDIANA,
TUESDAY, *August* 16, 1898—10 o'clock a. m.

* * * * * * *

Wells, Fargo & Co.'s Express.

The following letter is submitted by R. A. Wells, superintendent of Wells, Fargo & Co.'s Express:

CHICAGO, *August* 12, 1898.

Mr. W. H. Hart, sec'y State board of tax commissioners, Indianapolis, Ind.

DEAR SIR: I have received the assessment roll and valuation of express companies in the State of Indiana by the State board of tax commissioners for the year 1898, and will again try to see you and the honorable State board of tax commissioners relative to a modification of our assessment on mileage basis. As previously
142 explained, Wells, Fargo & Co.'s local business within the State of Indiana is exceedingly small. None of the towns reached in Indiana are cities of any size, and I do not feel that Wells, Fargo & Co. should be discriminated against in the matter of mileage assessment. Our chief competitors have equally as good lines, and a lower valuation put upon their mileage, and I feel that it is no more than right to ask for same consideration as is accorded the Pacific and the U. S. Express Companies, as our value should not be based higher on mileage proposition than theirs, or on such ratio. I will be satisfied if you will reduce our assessment to $100 per mile, which is only fair, compared with other companies. As compared with the Pacific Express our assessment should not be in excess of theirs per mile. I will aim to be in Indianapolis between August 16th and 25th.

Yours truly,

R. A. WELLS, *Supt.*

Thereupon the board adjourned until Wednesday, August 17, 1898, at 10 o'clock a. m.

143 (From the Proceedings of the State Board of Tax Commissioners for 1898, p. 831.)

INDIANAPOLIS, INDIANA,
MONDAY, *August* 22, 1898—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: James A. Mount, governor, chairman. William D. Owens, secretary of state. Americus C. Daily, auditor of State. I. N. Walker, Thos. B. Buskirk, commissioners. W. H. Hart, deputy auditor of State secretary of the board.

* * * * * * *

GOV. MOUNT: * * * Mr. Secretary, is there anything else to come before the board?

144 THE SECRETARY: There is a representive of the United States Express Company here, Mr. Kimball.

GOV. MOUNT: We will hear you, Mr. Kimball.

United States Express Company.

I. G. Kimball, representing the United States Express Company, appeared before the board and made the following statement:

MR. CHAIRMAN AND GENTLEMEN OF THE BOARD: In appearing before you to-day in behalf of the United States Express Company I desire to say, in opening that I deeply regret the inability of Mr. Platt, who is the general counsel of the company, to appear before you on behalf of his client, as he is in Europe on account of sickness. Therefore it devolves upon me, his assistant, to do the best I can.

While the presentation that I will make of this matter may be feeble, I cannot fail to believe that the board will appreciate the facts which I will present to it.

It appears by the circular issued by this board that it has laid an assessment upon this property of $125 a mile. How that assessment was arrived at, of course I am unable to state, but with due
145 respect to the board it does not seem to me that it is based upon the law and the report filed by the United States Express Company.

A report was filed by the express company as required by the law, and so far as we know it was satisfactory to the auditor and to the board, for no request has been made for any additional information as provided for in section 5 of the law; nor has there been any examination of any witnesses for additional information. Now, as I read the law, it seems to me that the duty of this board is nothing more than to make a mathematical calculation, based upon the verified report of the company. The law says, in section 7 that in the first place the board shall ascertain the true cash value of the entire property. That is, take the capital stock of the company at its market value, which, according to the report is $40 per share, and in the total amounts to 4,000,000 of dollars.

Then the law says, "That in case the whole or any portion of the property of such association, company, co-partnership or corporation, shall be encumbered by a mortgage or mortgages, such board shall ascertain the true case value of such property, by adding to the market value of the aggregate shares of stock or to the value of the capital stock, in case there shall be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall
146 be deemed and treated as the true cash value of the property of such association, company, co-partnership or corporation."

In the first place, as the express company has no mortgages upon its property, of course there is no such condition to be met.

Then the law says that the board shall next deduct the assessed value for taxation, of the real estate situated without the State of Indiana and not used in the business of the company, which, according to the report, is $43,500, which, deducted from the $4,000,000, would leave $3,956,500.

Then the law says: "Said State board of tax commissioners shall next ascertain and assess the true cash value of the property of such associations, companies, co-partnerships or corporations, within the State of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, co-partnerships or corporations, as above ascertained, after deducting the assessed value of such real estate without the State, which the length of the lines of said associations, companies, co-partnerships or corporations, in the case of telegraph and telephone companies within the State of Indiana bears to the total length of the lines thereof; and, in the case of palace, drawing-room, sleeping, dining or chair car
147 companies, the proportion shall be the proportion of such aggregate value, after such deductions, which the length of the lines within the State, over which said cars are run; and in the case of express companies, the proportion shall be the proportion of the whole aggregate value, after such deductions which the length of the lines or routes, within the State of Indiana, bears to the whole length of the lines or routes of such associations, companies, co-partnerships or corporations, and such amount so ascertained shall be deemed and held as the entire value of the property of said associations, companies, co-partnerships or corporations within the State of Indiana."

Taking that proportion, which is nothing but a mathematical calculation, the board will see that the value of the property of the company within the State of Indiana is $43,140.50.

Section 7 provides that from this amount shall be deducted the assessed value of the personal property situated within the State of Indiana and subject to local taxation, which amounts in round numbers to $10,000, as the report shows, leaving a balance of $32,167.64 to be divided by the mileage within the State, or by 1,659 miles, which result gives about $20 a mile.

148 Commissioner WALKER: In your report you say that the stock is returned at $40 per share?

Mr. KIMBALL: Yes, $40 per share.

Commissioner WALKER: What do I understand that valuation is based upon?

Mr. KIMBALL: That is the value at which the stock sold in the open market on that day—taken from the reports of the exchanges.

Mr. OWEN: What is the capital stock of the United States Express Company?

Mr. KIMBALL: The total capital stock is $10,000,000. The market value of that is $4,000,000, as, by reference to any exchange register, the board can see for themselves.

Mr. OWEN: Over what roads do you run in this State?

Mr. KIMBALL: The Baltimore and Ohio, the Baltimore and
149 Ohio Southwestern, the Chicago and Southeastern, the Evansville and Terre Haute, the Lake Erie and Western, the Lake Shore and Michigan Southern, the Southern Indiana; and that is all.

Mr. OWEN: Do you run over those roads in connection with other companies, or alone?

Mr. KIMBALL: We run over them alone, with the exception of the Lake Shore and Michigan Southern.

Gov. MOUNT: This matter of computation will be looked over, and if there has been any mistake in the computation, it will be corrected by this board.

Mr. KIMBALL: That is what I desire to ask, gentlemen. As I understand it, it is nothing but a mathematical calculation, and there seems to have been an erro- which I trust will be corrected.

I might say also that I wish to call the board's attention to the supplemental report which we annex to our report, which shows the invested capital of the company in the State of New York, which is taxed there, and which is in no way a part of the company's plant, and which we have asked the board to deduct before making its calculation. With reference to that matter, however, the
150 report speaks for itself, and I have nothing to say in regard to it.

May I ask if the board has before it the report?

Commissioner WALKER: It is on file in the auditor's office.

Mr. KIMBALL: There seems to be an amount left out of the copy of that report which we retained and I desire to insert that amount.

Commissioner WALKER: You will find it on file.

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Thereupon the board took recess until 2 o'clock p. m.

151 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1898, page 847.)

INDIANAPOLIS, INDIANA,
TUESDAY, *August* 23, 1898—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: William D. Owen, secretary of state. Americus C. Daily, auditor of State. I. N. Walker, Thos. B. Buskirk, commissioners. W. H. Hart, deputy auditor of State, secretary of the board.

On motion of W. D. Owen, Commissioners Walker was made chairman of the board, *pro tem.*

The CHAIRMAN: What have you for this morning, Mr. Secretary?

The SECRETARY: Mr. Daniels is here, representing the
152 American and National Express Companies, and wishes to be heard.

The CHAIRMAN: We will hear you, Mr. Daniels.

American Express Company.

National Express Company.

Mr. Edward Daniels, counsel, representing the American Express Company and the National Express Company, made the following statement:

MR. CHAIRMAN AND GENTLEMEN OF THE BOARD: On behalf of Mr. Hughes, and myself, who are here representing the American and National Express Companies, I want to thank the board for consenting to sit at this hour.

I desire to protest against the preliminary assessment of $450. per mile of the lines or routes of those two companies, that has been made and announced by your board.

The poor you have always with you. We do not come here in that attitude, at all. We do not claim that these express companies are poor, and we do not protest upon that ground. We do protest because we think the assessment made, or proposed to be made, is grossly out of proportion to the value of the property which you board is required to assess.

153 We stand upon our rights. It is true, that criticism has been made of the express companies for taking a position of that kind. As a matter of fact, more than any other of the great commercial organizations of the country, the express companies of today are subjected to a condition of small economies in order to be successful. I believe that no article has yet appeared in Scribner's Magazine, descriptive of the business and workings of the express companies, as have appeared with reference to other financial enterprises of our country. It would be an interesting history, if it were published. The express companies are not more than fifty — old. James C. Fargo, the president of the American Express Company is the younger brother of William G. Fargo, who was the first president

of that company. My. Hughes, who is here as the representative of the American Express Company has been in the employ of that company for almost the length of its life—forty years.

I have said that the express business is now subjected to a condition of small economies. And that is true, because of the competition with which it meets from two sources. First, in the transportation of small packages, by the Post Office Department; and second, in the transportation of bulky freight by the railroad fast freight lines. Those two methods of transporting packages which
154 were formerly exclusively transported by the express companies, have seriously cut into the business of the express companies and have made a reduction of expenses an absolute necessity. As evidence of this method of conducting the business, you, yourselves, are aware of the fact that joint offices of the express companies are being established and maintained throughout the country. The Adams and American occupy a joint office at so large a city as Anderson; the United States and the American occupy a joint office at some other cities in the State, equally as large. Now that reduction in the force has been made necessary, as I have said, by reason of the reduction in the business of the express companies, caused by the competition, on the one hand by the Post Office Department, and on the other hand by the fast freight lines. So that if the express companies are to continue in business it has become necessary that they shall see to it that every dollar is properly laid out and accounted for, and that every economy is practiced that is possible.

And along that line we are here this morning, saying that we are prepared to pay what would be a just and proper tax upon that *species* of property which the courts have called mileage of express companies, which consists of the lines or routes of those companies, as segregated from their physical, tangible property,—horses, wagons, safes, etc., that are taxed under the Indiana statute, by the local taxing officers.

155 I said at the outset, that these two companies are here standing upon their rights. It is necessary that they should do that, and that necessity is shown by the fact that Indiana is not alone in this method of taxing express companies, upon their so-called mileage property. You are doubtless aware that Ohio has a similar statute, and Kentucky also. And since the passage of the Indiana, Ohio and Kentucky statutes, Pennsylvania and Michigan have passed similar statutes—not similar, but which put upon the property of the express companies assessments even larger than those which are here placed upon those companies by your honorable board.

These express companies are engaged in business in anywhere from fifteen to twenty States of the Union, and it is a plain business proposition, that if these exorbitant values are to be given to their mileage in those fifteen or twenty States, under statutes similar, or analogous, to that under which your board is acting, the taxes to be paid by these companies will be simply enormous, and out of all proportion to the value of the property which they own.

I wish to speak *to* two propositions shown by the report of the American Express Company, that bear upon its assessment. First, with reference to the number of miles, in the aggregate of its lines or routes; and second, with reference to its personal property, not used in the express business, without the boundaries of the
156 State of Indiana, and therefore not subject to the jurisdiction of the State of Indiana, for taxation purposes.

You will recall that the statute provides that the express companies shall make a return of the number of miles of their lines or routes. The American Express Company, by its return, submitted to this board, through the auditor of state, shows that it has 163,063 miles of lines or routes. It practically girdles the globe, having its offices in London, Paris, Vienna and Calcutta. Now, we submit that taking that total mileage of this company and applying it, as you are directed to apply it by the statute, the length of the lines or routes of this company, to the amount of capital returned by this company, as its property, viz: $21,600,000, it is mathematically impossible, practically impossible, as a business proposition, to reach the conclusion that this company's property is worth $450 a mile. It shall not elaborate that proposition; it is a matter of mathematical calculation, and I ask the board to consider that matter, with reference to the figures which you have fixed in your preliminary assessment, as to the value of the property in the State of Indiana.

The CHAIRMAN: You say there are 163,000 miles?

Mr. DANIELS: Yes sir.

157 The CHAIRMAN: What proportion of that mileage is in the United States?

Mr. DANIELS: That I can not give, and I asked Mr. Hughes about that last night, but he could not give it accurately.

The CHAIRMAN: Does your report show?

Mr. DANIELS: No sir it does not.

The CHAIRMAN: Is this the first year that the total mileage, the ocean mileage, and the foreign mileage, and everything, has been taken into consideration?

Mr. DANIELS: Yes. Next year will give the total railroad mileage. I call your attention to the language of the statute—"lines or routes." That, of necessity, must include ocean, lake and river mileage, because the contracts under which the American Express Company operates, are positively the same upon lake and river steamers as they are upon railroads. The statute not excluding ocean, lake and river lines, we submit that they must be considered.

158 The CHAIRMAN: You have a great deal of foreign mileage—the other side of the ocean, haven't you?

Mr. DANIELS: Yes; but, as I said, I am not prepared to give the proportion of the mileage in this country, as compared to the total mileage.

Commissioner BUSKIRK: This report is the first one that covers the foreign mileage. The last report covered the mileage in the United States, didn't it?

Mr. DANIELS: That last report covered the railroad mileage exclusively, and was based upon the theory that the language of the statute meant only railroad lines or routes, but we submit that it includes water lines or routes.

Now the second proposition to which I wish to invite your attention is the personal property of the American Express Company, not used in the express business, constituting no part of its express plant, and which is not within the State of Indiana physically, and is not subject therefore to the jurisdiction of the State of Indiana for taxation purposes.

The report of the American Express Company filed and before your body, shows that the American Express Company is the owner of bonds, stocks, notes, and other like securities, to the amount
159 of, in round numbers, $16,000,000, or to be precise, having a market value of $16,501,344.33. The report shows what that property is; that it is situated physically in the city of New York; that it is no part of the plant of the American Express Company that is used in conducting the express business; that it has no connection with that plant. You will recall that Justice Brewer, in passing upon the petition for a rehearing in the express company's tax case, said: "It is urged that the express companies have personal property not in the State of Indiana and not used in connection with their express business, of large amounts, which, by the method of taxation here adopted, is taxed in the State of Indiana, and that this property should not be so taxed." Then Justice Brewer, continuing, said "Let that fact be shown. It does not appear here." Now, to meet the suggestion of Justice Brewer, the American Express Company, by this report submitted to your body, has shown that it has just such property, of the value in round numbers of $16,000,000 This report further shows that it has $18,000,000, face value, of interests or shares; that it is a joint stock association, or partnership, existing under the laws of the State of New York; that these $18,000,000 of interests or shares on the 1st day of April, 1898, upon the market, were of the value of $21,600,000; that is to say, that $1.00 was worth $1.20; and that showing is in conformity with the requirement of the statute
160 under which your body is acting. Now we submit that that property is taxed in the State of New York as tangible property, subject to the jurisdiction of the State of New York for taxation purposes; that it has no connection with the express plant of the American Express Company, which is represented in the State of Indiana by the lines or routes over which the American Express Company conducts its express business in the State of Indiana. We submit that that amount of $16,000,000 should be deducted from the $21,600,000 for the purpose of arriving at the value of the mileage of the lines or routes of the American Express Company in the State of Indiana, upon which you are to make an assessment.

The CHAIRMAN: Have you figured that out, Mr. Daniels?

Mr. DANIELS: Yes.

The CHAIRMAN: What do you get as a result?

Mr. DANIELS: I will answer that question by saying that we have prepared a formal protest in writing, which I desire to file and submit, and in that we have made to appear the result as arrived at from the different points of view, which we contend the evi-
161 dence here shows, viz, with reference to the mileage, 163,063 miles, or 35,000 simple railroad mileage; and with reference to the deduction of the $16,000,000 as applied to those two lengths of miles, and I will not take your time to go through the calculation. I have it here.

We insist that upon the assumption of the grounds most against the American Express Company, under the evidence here submitted, the rate cannot be in excess of $138 a mile. My recollection is that the smallest amount that could be assessed is $25. a mile. That is, upon the hypothesis that we have 163,063 miles of lines or routes, and that you must deduct the $16,000,000 of personal property held in the city of New York and not used in connection with the express business, and also deduct the real estate outside of the State of Indiana, in round numbers a million dollars. That is, upon the most favorable basis to the company that we can insist upon. On the basis most favorable to the State we insist that it can not be in excess of $138 per mile; and on the basis most favorable to the express company, it can not be more than $25 per mile.

The CHAIRMAN: What other States have a similar statute to Indiana?

Mr. DANIELS: Ohio and Kentucky.

162 The CHAIRMAN: What do they assess you at in Ohio?

Mr. DANIELS: Not so much. I know that the Ohio assessment is less that the Indiana assessment. The Kentucky assessment is just $100 more than the Indiana assessment. They only have 300 and some odd miles in Kentucky.

Now, speaking to the protest of the National Express Company, the report here shows that it has, face value, $500,000 of shares or interests; that it has 4565 miles of lines or routes, and that it has no other property.

The CHAIRMAN: They are all in the United States?

Mr. DANIELS: Yes, they are all in the United States. It has no water routes, so far as I know. Upon that basis the National Express Company's mileage could not be in excess of $110. It is a little less than that—$109 and a fraction. The report further shows that the National Express Company operates as an express company upon its own account, upon lines in New York and Pennsylvania; that in States west of New York and Pennsylvania, in Ohio and Indiana, and especially Indiana it oper-
rates as the agent of the American Express Company.
163 That is to say, to illustrate, the National Express Company makes a contract for transportation with the Nickel Plate railroad—the New York, Chicago and St. Louis railroad; the American Express Company furnishes the equipment for the transaction of the express business to be done under that contract; it guarantees the National Express Company against any loss upon the business

so conducted, and aside from a small sum paid to the National Express Company, as such agent, the gross receipts of the business are taken by the American Express Company. That is true of all the lines, and there are only three over which the National Express Company conducts business in the State of Indiana. Those three are the Nickel Plate, Clover Leaf and the Grand Trunk.

I have now taken more of your time than I intended, because I remembered that this is almost a holiday in this city, but I desired to make it known that I was not here in a perfunctory way, to make this protest, and as I have already stated, each of these companies has prepared a formal written protest, which I desire to submit and have filed and considered by your board.

Assistant Attorney-General MOORES: I desire to ask a few questions of Mr. Daniels, if the board will allow me.

164 The CHAIRMAN: Proceed, Mr. Moores.

Mr. MOORES: Mr. Daniels, we are in absolute ignorance on one question, and I want to ascertain something about it. In the first place, have you any water lines in the United States?

Mr. DANIELS: Yes, but I can't tell you where they are. They are on some rivers and some lake lines.

Mr. MOORES: Do you represent only these two companies, or any other companies, before this board this morning?

Mr. DANIELS: Only these two companies.

Mr. MOORES: What foreign lines has the American Express Company?

Mr. DANIELS: That would take a long time to answer. There is the tariff sheet which will inform you with reference to that matter. We will file these tariff sheets here with you, gentlemen.

Mr. MOORES: On Liverpool business, what method do you pursue? Do you send your agents on board ship to Liverpool with the shipment?

165 Mr. DANIELS: There is an agent in Liverpool, of the American Express Company.

Mr. MOORES: Do you send agents on board ship?

Mr. DANIELS: No, I think not.

Mr. MOORES: You ship the goods on shipboard without a messenger going with the shipments?

Mr. DANIELS: Now, I don't know with reference to that. We handle business on some railroads by employing the railroad employees to look after matters.

Mr. MOORES: Have you with you any form of contract that you have with any of the water lines?

Mr. DANIELS: No sir I have not.

Mr. HUGHES: We have the regular European department take charge of all those matters. We don't know anything about that.

Mr. MOORES: You, however, employ agents regularly at England, Ireland or Scotland?

166 Mr. HUGHES: We have representatives there, but as to whether they are exclusive agents of ours, or are men employed in other business, I am not prepared to say.

Mr. MOORES: In estimating the mileage of those foreign lines, have you designated the hotels where travelers can cash checks, and all that sort of thing?

Mr. HUGHES: I don't know anything about that. The mileage is made up by our New York people, and I don't know.

Mr. MOORES: You know, as a matter of fact, that at almost every hotel in Europe, American Express money orders can be cashed, and that all the French banks are interested in your company in that way, do you not?

Mr. HUGHES: Yes, the same as in this country; any bank or hotel here will cash those.

The CHAIRMAN: Mr. Hughes, you don't have messengers traveling between London and other points in England, do you?

Mr. HUGHES: We have an agent in Paris and one in
167 London, and we have wagons there, but I don't know how they transact the business over there.

The CHAIRMAN: In this 163,000 miles do you count the mileage from New York to Paraguay, for instance?

Mr. HUGHES: I don't know about that.

Mr. MOORES: Now with reference to the West Indies—do you run any direct line to the West Indies that you know of?

Mr. HUGHES: Only from the information I get through printed documents.

Commissioner BUSKIRK: Mr. Daniels, do you say your capital stock is $18,000,000?

Mr. DANIELS: Yes.

Commissioner BUSKIRK: And its market value was, on the first day of April, how much?

Mr. DANIELS: $1.20, making $21,600,000.

Commissioner BUSKIRK: What amount do you say should
168 be deducted from that because it is not used in your express business?

Mr. DANIELS: $15,000,000.

Commissioner BUSKIRK: Why should not it be included?

Mr. DANIELS: $21,600,000 is the aggregate of all of the property of the American Express Company; $15,501,344.33 is bonds, stocks, and notes held in the State of New York and not used in the express business. Our proposition is that that $15,000,000 should be deducted from the $21,600,000 because the difference represents the mileage of lines or routes.

Commissioner BUSKIRK: That $15,000,000 goes in to repay the capital stock, doesn't it?

Mr. DANIELS: Yes, but you are not assessing the capital stock. You are assessing the property—the unique form of property which is called "express lines or routes," and our proposition is that that amount does not include any physical, tangible property, like bonds and notes, not used in the express business.

169 Commissioner BUSKIRK: It is only lately that you have put the construction upon the statute that it should include the water routes, is it not?

Mr. DANIELS: Yes, this is the first year that we have submitted that proposition.

Commissioner BUSKIRK: You put that construction on it on the theory that the word "lines" was intended to cover the railroad lines, and that the other word "route" was intended to cover the water routes?

Mr. DANIELS: No sir, we think that they are synonymous; we think railroad routes and water routes are the same thing. The proposition is, what is a line or a route of an express company? I don't understand the statute to mean a company operating exclusively on railroads.

The CHAIRMAN: Is there any further statement you desire to make, Mr. Daniels?

Mr. DANIELS: I think not.

The CHAIRMAN: We will take this matter under consideration.

Thereupon the board adjourned, to meet on Wednesday, August 24th, 1898, at 10 o'clock, a. m.

170 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1898, from page 863.)

INDIANAPOLIS, INDIANA,
WEDNESDAY, *August 24th*, 1898—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present; James A. Mount, governor, chairman. Williams D. Owens, secretary of state. Americus C. Daily, auditor of State. I. N. Walker, Thos. B. Buskirk, commissioners. W. H. Hart, deputy auditor of State, secretary of the board.

No one appearing to be heard, the board, on motion, went into executive session.

The following orders were made:

In the matter of the petition of the American Express Company for a modification of its assessment as fixed by the board during the first twenty days of its present session, the board having heard and considered the same, it is

171 Ordered, that the prayer of the petition be denied, and that the assessment of said company remain as heretofore fixed by the board during its present session.

In the matter of the petition of the National Express Company for a modification of its assessment as fixed by the board during the first twenty days of its present session, the board having heard and considered the same, it is,

Ordered, that the prayer of the petition be denied, and that the assessment of said company remain as heretofore fixed by the board at its present session.

In the matter of the petition of the United States Express Company for a modification of its assessment as fixed by the board during the first twenty days of its present session, the board having heard and considered the same, it is

Ordered, that the prayer of the petition be not granted, and that the assessment of said company remain as heretofore fixed by the board during its present session.

172 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1898, page 867.)

INDIANAPOLIS, INDIANA,
FRIDAY, *August* 26, 1898—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: Jas. A. Mount, governor, chairman. W. D. Owen, secretary of state. Americus C. Daily, auditor of State. I. N. Walker, Thos. B. Buskirk, commissioners. W. H. Hart, deputy auditor of State, secretary of the board.

Gov. MOUNT: The Wells, Fargo Express Company, I understand has a representative here who desires to be heard this morning. We will hear you now, Mr. Wells.

173 Wells, Fargo & Company.

Mr. R. A. Wells, representing Wells, Fargo & Company, appeared before the board and made the following statement:

Governor, and members of the board, I have had more or less correspondence with the board, through its secretary, Mr. Hart, with reference to the assessments of the express companies in Indiana, on a mileage basis. While it is true that Wells, Fargo & Company have a small mileage in Indiana, as compared with the Pacific and Union Express Companies, which are its chief competitors, there is a lack of uniformity of the assessments per mile, which I do not think could be the result of discrimination against us. I don't see why we should be assessed much more, if any, than the Pacific Express Company, whose route is an extraordinary good line, the Wabash, through Indiana; and, as previously explained, in 1896 and 1897, our local business in the State of Indiana is very small; the towns reached by us are not cities of any size. The United States and Pacific Express Companies, our chief competitors, are assessed less than we are, and yet they have better business than we have. It does not seem that we should be assessed more per mile than either of those companies;

174 and on a comparison with the Pacific Express Company we should not be assessed to exceed $50 per mile. They carry trans-continental business, operating over the Union Pacific lines. Their tonnage is perhaps greater than ours. The United States Express Company's tonnage is doubtless greater than ours across the State. Then, if your assessment is arrived at by comparing the value of our stock, you should take into consideration the banking capital as segregated from the total capital of the company. Our total capital is $8,000,000, and the amount devoted to banking is $4,000,000. The banking department of our business is not conducted in the State of Indiana.

The State of Arkansas recently reduced our assessment on the mileage basis to $76 per mile. In that State we are similarly situated with Indiana. We have a through line with a small local business, while the Pacific Express Company has a very heavy local business. I feel that it is now proper for me to ask for the same consideration as that granted others who are our chief competitors. I think we would be satisfied with an assessment of $100 per mile, which is all it should be under the circumstances. I trust that your honorable board will consider the request and modify the assessment to that extent.

Before closing, I wish to enumerate the accurate official statement of our mileage, the number of offices, etc. which should be
175 taken into consideration by your honorable board, relative to taxation.

The mileage of Wells, Fargo & Company is composed of 30830 miles of railroad, 1527 miles of stage, 6843 miles of steamer lines, a total of 39,200 miles, with 3,312 offices.

Mr. OWEN: Where are the steamer routes?

Mr. WELLS: We operate the Pacific mails and also some steamers on Puget sound.

Mr. OWEN: The Pacific mail goes from San Francisco to Honolulu?

Mr. WELLS: Yes, I know, but we don't reckon that in our mileage. We operate the steamers along the Pacific coast. We operate some lake steamers also.

Mr. OWEN: That is, you operate from Puget sound down along the coast?

Mr. WELLS: Yes.

Mr. OWEN: But you don't count the mileage out into the ocean?

Mr. WELLS: No, sir, we don't count the mileage because
176 the steamship companies act for us. Of course we are represented all throughout Europe, but we operate merely upon the Pacific coast steamer lines.

Commissioner WALKER: In your return—is that the number of miles that you return?

Mr. WELLS: No sir. I was just going to finish this. We have 3312 offices; while the total length of lines or routes in the State of Indiana is only 159.76/00 miles, the number of offices is 34. We operate only in Adams, Wells, Huntington, Wabash, Fulton, Pulaski, Laporte, Porter and Lake counties, on the line of the Chicago and Erie road. That is the only road we operate on in this State. None of those counties, you will notice, have any large cities, Huntington being the largest. There is not a large city on the line.

The figures set forth the fact that we are a smaller company than the others in the State of Indiana, and probably don't handle as much tonnage per mile as the other companies.

Assistant Attorney-General MOORES: Do you send your messengers in charge of all freight and expressage matter on these lake and coast steamers?

177 Mr. WELLS: Yes sir, most generally. There are times when we don't. We have space on the steamers, locked space; but most generally we send our messengers from San Francisco to Tacoma, Seattle and Portland. We also operate the Lake Superior Transit Company from Cleveland to Buffalo.

Mr. MOORES: Have you any river routes at all?

Mr. WELLS: We have no river routes at all, in this section of the country.

Mr. MOORES: You do run between San Francisco and Sacramento?

Mr. WELLS: Yes, we have there.

Mr. MOORES: What were your total assets returned to the board—do you remember?

Mr. WELLS: I think our report shows. I could not say from memory.

Mr. MOORES: On these stage lines, do you own the stages?

178 Mr. WELLS: Yes; some of them under the name of Wells, Fargo & Company and some of them under other names.

Commissioner WALKER: Do you have agents throughout Europe?

Mr. WELLS: Yes, we, have, throughout Europe.

Commissioner WALKER: Where you have these agencies persons can go and cash money orders, can they?

Mr. WELLS: Yes, and they also act as our agents in receiving packages, etc., and in Berlin we have an agency connected with the railroad company-s, and also all throughout England and Ireland.

Commissioner WALKER: You have no messengers—that is, you have no routes in Europe?

Mr. WELLS: No sir, we do no local business in Europe. We simply act at the seaports. They have local express companies over there. Sutton & Company, for instance, operate an express company there. I believe the three companies—the United States, the American and Wells, Fargo & Company, are represented throughout Europe.

179 Commissioner WALKER: Just the same as you are.

Mr. WELLS: Yes sir. It would not probably be necessary for me to appear before this board if we reached any town in Indiana of any consequence. If it were a fact that we had towns in Indiana of any great importance it would not be necessary for me to appear before you.

I think you, gentlemen, for your attention, and I hope the matter will receive your consideration.

The secretary of the board read a communication from Lawrence Maxwell, Jr., attorney for the Adams Express Company, which is as follows:

"To the honorable State board of tax commissioners of the State of Indiana:

Petition of the Adams Express Company for Modification of its Assessment.

Your honorable board has assessed the Adams Express Company the same as last year, to-wit: $400 per mile. Last year the company's stock was about $1.50, this year it is less than par; in
180 other words, its capital has been reduced in market value by one-third, and the assessment should be made accordingly. The reduction comes from a distribution which the company made of a large part of its assets, reducing to that extent its capital. We suppose that these facts have been overlooked by your honorable board. If you will look at the return filed for the present year, you will see the difference between the present and former market value of the company's stock, and we respectfully ask the reduction of the assessment accordingly.

Respectfully submitted by

THE ADAMS EXPRESS COMPANY.
LAWRENCE MAXWELL, JR., *Attorney.*"

Thereupon the board, on motion, went into executive session.

The following orders were made:

In the matter of the petition of Wells, Fargo & Company
181 for a modification of their assessment as fixed by the board during the first twenty days of its present session, the board having heard and considered the same, it is

Ordered, that the prayer of the petition be granted and that the assessment of said company be fixed at $100 per mile.

In the matter of the petition of the Adams Express Company for a modification of its assessment, as fixed by the board during the first twenty days of its present session, the board having heard and considered the same, it is

Ordered, that the prayer of the petition be granted, and that the assessment of said company be fixed at $350 per mile.

And thereupon the board took recess until two o'clock p. m.

182 COMPLAINANT'S EXHIBIT No. 9.

Transcript from the Proceedings of the Indiana State Board of Tax Commissioners for the Year 1899. Rowland Evans, Special Examiner.

183 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1898, page 197.)

INDIANAPOLIS,
TUESDAY, *July* 25, 1899—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: James A. Mount, governor, chairman. Union B. Hunt, secretary of state, W. H. Hart, auditor of State, Thos. B. Buskirk, John C. Wingate, commissioners; Frank Martin, deputy auditor of State, secretary of the board.

The American Express Company.

The National Express Company.

184 Albert Baker, counsel, appears on behalf of the American Express Company and the National Express Company, and makes the following statement:

Mr. BAKER: In the case of the National Express it is largely a question of fancy as to where its taxes ought to be laid. The statement this year, as you discover, shows the same condition as to the ownership of this tangible property in this State, as last year; that is, that it has no tangible property in this State which it owns. It has tangible property which it possesses as the agent of the American Express Company. It does not business in this State on its own account, but does business on 400 miles of road, as the agent of the American Express Company. The American Express Company pays its taxes. While the tangible property mentioned in the statement, is assessed locally to the National Express Company, the taxes are actually paid by the American. If there are any losses the American Express Company pays all the losses. When there are profits the American Express Company takes all the profits. It is purely an agency business, so far as Indiana, and several other States, are concerned. It has some States, East, where it runs a business on its own account. In those States it has property. As far as the National Express Co., is concerned, it seems to me entirely erroneous to assess it on property which it borrows from some one else, to use in that other person's business. Whatever value that property adds to the American Express Company property,
185 should be so — mileage added to the American mileage, when the real value of it is ascertained.

Mr. WINGATE: Is this property the National Express Company uses, listed by the American?

Mr. BAKER: It is listed by both. It is listed by the National in its list, but it says it don't own it. It is also listed by the American, but in its list it says it owns it, but has leased the property to the National. That property is listed to the National, and the taxes are paid in the name of the National, by and with the American's money. The taxes of last year, against the National are the subject of litigation now pending, Mr. Hart, the auditor, being the defendant, in a suit in the United States court. The collection of the taxes was enjoined. The certification of the taxes to the county auditors was enjoined on the same theory it was enjoined in the American Express case, and my main object in appearing before you is to explain that proposition. The American shows in its return that it has certain personal property in this State, on which it pays its taxes; that it has this property loaned to the National Company, on which it also pays its taxes, and that it has so many miles of route in this State, and so many miles outside of this State, including its mileage in foreign countries. And that is the first question I want to speak to the board about. It was stated by the attorney general in this injunction case before Judge Woods, to which I have re-
186 ferred, that the mileage in foreign countries is somewhat fictitious; that it was not discovered until Indiana and other States had adopted the mileage basis of taxation, and that then it was discovered. That is not true, as will be shown by the evidence I will submit to the board. The American Company conducts its foreign express business, in the way any other company does, as the evidence will show. The change was made shortly before the first time it appeared as foreign mileage in these reports, and I think it appeared for the first time last year; possibly the year before. I think the change was made in the fall of 1897. Now, as these affidavits will show, the American Express Company actually conducts an express business, with its own messengers, and officers, just as it does in this country, except that it conforms to the customs of those countries whatever their customs are. Of course that adds a very large mileage to the United States mileage, and represents a proportion of the mileage in Indiana. There isn't any question about that. The question is, is ther- anything in this statute which permits this board to say that the mileage in Indiana shall be part of the mileage in the United States, or shall it be part of the whole mileage owned and operated by the person to be taxed. That is the question that is before the board, and I think you will
187 seek in vain for anything in the statute that will warrant the exclusion of any of the mileage of any of these express companies, no matter where it is, because it says, mileage operated, as I understand it. The most serious question that the American Express Co. presents is the one of the method of arriving at the value of its mileage in this State, on the value of the stock. It has shown in its report what its capital stock is; what it was worth in the market, on the date that the law requires. I will not go into the figures to show that; it is not necessary; the report is before you. Last year, and the year before, and several years before, the board

found the value of this line per mile by dividing the whole worth of its capital stock, as it was selling on the market, by the number of miles operated, and then apportion the number of miles to Indiana that Indiana has, and thus get the value for this State, the value being $450 a mile. We were then contending that was an importation of values into Indiana; that there was no property to be taxed; that it was a taxation of the mere right to do business over these roads. On that contention we have been defeated in the Supreme Court of the United States. That is no longer an open question. Beyond question that is a proper method of taxation now. However in the opinion of the Supreme Court, delivered by Mr. Justice Brewer, on the petition for a re-hearing, he stated that the question had
188 been presented that much of the property of these express companies was not used in the express business. That much of it was merely capital invested, and much of this invested property drew rents, or dividends or interest—money loaned on mortgages, money invested in railroads, city and other bonds, money invested in railroad stock, money invested in real estate on which buildings had been erected for rental purposes only, none of which were used in the express business. That was the claim that was made in the case pending in the Supreme Court of the United States. Mr. Justice Brewer in that case said it was well settled that property that was not used in the express business could not be taxed in this way, could not be taxed in the State where the property was not located, and he cited a long list of authorities. He said "In this particular case that question is not before the court, because no proof was produced before the board that there was such property." And he says, "When proof is produced and any State assumes to assess property located elsewhere, and not used in the express business, then this court can be appealed to for a remedy." On that suggestion, last year the American Express Company filed a statement showing that over fifteen million dollars, out of the twenty million dollars of value of its capital stock was invested in bonds and stocks, and money loaded and at interest on mortgages, and in large buildings in Buffalo, New York, and other places, that were rented
189 to other people—office people and the like. We offer then to exhibit these things, or to make such proof as the board might wish, if they have any doubt as to whether they were in existence and not in use in the express business. The board did not call for any other proof, and we imagined then, and imagine now, it was not a question of fact that the board distributed this on, but a question of law, purely. In other words, that the board thought, that being true, whether this property is used in the express business or not, as long as it gives value to this stock—and it certainly does that—because its dividends are paid out of the earnings of this property, when the express company losses money, as it does at times; that if this property is adding value to the stock, it is immaterial whether it is used in the express business or not, that it is owned by the express company, and therefore we will apportion that value to the miles in this State. That is what the board, in effect, said. We

then appealed to the court. We asked for a preliminary injunction from Judge Woods. It was granted. There was a motion made then by the attorney general to dissolve that injunction. It was fully argued and that motion was denied, and the injunction still stands. Now, it seems to me, that the main question before the board that we wish to present is this: whether or not the board will follow the suggestion of the Supreme Court of the United States, as I ask you to do, and allow out of this total value, the value of
190 this property, real and personal, which is not located in Indiana, and which is not in any way connected or used in the express business. Before reading these affidavits I have here, I want to say there is one practical suggestion I wish to make, and I think in this possibly the attorney general will join me. I have had several conferences with the attorney general about the National and American pending cases, and if this board thinks the law is as it thought last year, and intends to include this year the non-express property in the valuation. It would be a great accommodation to us, and I think it would be to the attorney general if that fact could be known not very far hence, because then another suit of course will have to be brought. Exactly the same question will be involved, but you can not include the two taxes in one suit, and it will require the drafting of a new appeal, and the attorney general has assured us he will, so far as possible, accommodate us, in the way of saving the labor of getting the papers in form, in presenting the question twice. If the board abides by its opinion of the law, I *I* now wish to read two affidavits that were filed in support of the appeal in the American Express case before Judge Woods, and to say that we will leave copies of them with the board. They are part of the files, and of course, I can not take them away. These were made with reference to the appeal on the 1898 assess-
191 ment. I want to say further that we are informed by the general manager of the American Express Company, that these properties are still in their hands, just as they were then; tha t the conditions are substantially the same, except that some of them are slightly increased in value, and that we offer now to make a further showing on that subject, if the board shall have any doubt of that fact.

Said affidavit is as follows:

Circuit Court of the United States for the District of Indiana.

JAMES C. FARGO, as President of the American Express Company,
against
AMERICUS C. DAILY, Auditor of State of the State of Indiana.
No. 9620.

192 UNITED STATES OF AMERICA, *Southern District of New York*, } ss:

James C. Fargo, being duly sworn, says that he is the president of the American Express Company, a joint stock association consisting of more than seven persons, organized under the laws of the State of New York, and the complainant in the above entitled cause. That deponent has read the bill of complaint herein filed on the 24th day of August, 1898, and that the matters and facts therein stated are true.

Deponent further says that he has read the affidavit of the defendant Americus C. Daily herein, verified the 29th day of August, 1898; that said affidavit does not truthfully and accurately describe the manner in which the American Express Company conducts its express business between the United States and other foreign countries, nor does said affidavit truthfully and correctly explain why the American Express Company has returned the total length of its lines for the year 1898 as 163,063 miles, being a very large excess over the length of mileage returned for the year 1897. And deponent further says that the facts in respect to the carrying on by the

193 said American Express Company of the general express business between the United States and foreign countries, are as follows:—

The American Express Company has excepted express shipments from points in the United States to a large number of foreign countries for a number of years, and up to the year 1896 such business was transacted by the American, Adams, and the United States Express Companies in the same manner.

In the latter part of the year 1896, however, the American Express Company established exclusive express agencies in the cities of London, Paris, Liverpool and Southampton; that is, agencies conducted by its own exclusive employees solely in the service of the American Express Company, such offices being as much a part of the company's organization as its agencies maintained in Chicago, New York, Boston or Indianapolis. Since that date the American Express Co.'s shipments to, as well as from the principal countries of Europe (have been forwarded via the ports of New York and Boston) from interior places as well as from the seaports mentioned; thus placing the American Express Company's transactions to and from Europe upon the same basis as its transactions to and from points within the United States, and altering entirely the mode, methods and means for the transportation of its foreign shipments between the United States and Europe and other points abroad.

194 The American Express Company issues for express packages carried its through receipts, and gives through bills of lading to destination in all foreign countries reached by it. Under these bills of lading the liability of the express company in respect to the packages carried continues until the packages reach their destination, whereas in the case of domestic receipts, or bills of lading, the liability of the American Express Company is expressly made to terminate as soon as the package is delivered to a connecting line.

In regard to all foreign business of the American Express Company, the property carried is in the control of the company from the time of leaving the United States until destination is reached, either being handled by the express company's own employees in France or Great Britain, or by forwarding agents in other foreign countries, who forward the packages for the American Express Company over such routes as it may select from time to time.

Since the latter part of 1896 the American Express Company has generally entered into contracts and agreements with the various steamship lines crossing the Atlantic, either for special rates, or for special privileges and facilities in the handling, care, and—or—quick delivery of the company's traffic handled by such lines.

195 All consignments of European freight carried by the American Express Company for and from the United Kingdom of Great Britain and Ireland, France, Switzerland, and a portion of Italy, are made through exclusive agents of the American Express Company in England and France and after and on October 1, 1898, this company will dispense with its agency arrangements now existing in Germany and will establish its own exclusive offices at Hamburg and Bremen. That part of the European express business now, and on the first of April, 1898, handled by the American Express Company's European exclusive agents comprises more than 90 % of the entire business transacted by the American Express Company between the United States and European countries.

Deponent further says that in England the American Express Company has never had any contract or dealings of any kind with the firm of Sutton & Co., and that firm has never forwarded any packages for said American Express Company. In the German Empire the American Express Company has never had any dealings with, or forwarded packages by Heinrich Becker & Co.

That so far as the foreign business of the Adams Express Company is concerned, as deponent is informed and believes that company never has either maintained, or claimed to have maintained a foreign organization, or even agencies, all business of this nature as controlled by that company being turned over by it at New York to a local foreign express company for transmission abroad.

196 As the complete establishment of this company's European department abroad was not effective and in working order until the spring of 1897, this company did not for that reason, claim

in its report made to the State of Indiana for the year ending April 1, 1897, any of the ocean mileage which was shown in its report for the year ending April 1, 1898.

And opponent further says that all of the statements of the said Americus C. Daily as to the manner in which the said American Express Company is alleged to carry on its express business beyond the limits of the United States, except in so far as the said statements coincide with the above statement of deponent in respect to such methods of business are in fact untrue.

Deponent further says that it is not true that the lines maintained by it outside of the United States are not express lines or routes in the ordinary acceptation of the term, but on the contrary thereof deponent says that outside of the United States the business of the American Express Company is carried on as above indicated, and that in so carrying out the said express business the American Express Company maintains and operates express lines and routes in the common acceptation of the term, between the United States and foreign countries.

That in the mileage of express routes beyond the United States, only mileage between the United States and sea ports of
197 foreign countries has been reckoned, and not mileage within such foreign countries.

Deponent further says that he has read the affidavit of James F. Fargo, assistant treasurer of the American Express Company, verified the 15th day of September, 1898, and that the facts stated in said affidavit are true, and that all the securities and other personal property of the said American Express Company specified in said last named affidavit as being on the 1st of April, 1898, of a market value of $15,501,344.33, were on the said date, and for long prior thereto had been, in the city of New York, where the principal office of the American Express Company is, and had never been at any time in the State of Indiana; that said property on the 1st day of April 1898, and prior thereto was in the hands of the American Express Company as an investment of so much money for purposes of income for the said company as the same would be used by any individual not engaged in the express business, and that no part of said personal property valued as aforesaid at the sum of $15,501,344.33 was on the 1st day of April or at any time prior thereto used by the American Express Company in the maintenance and operation of its express business as a common carrier or otherwise, and that all of said property on the 1st day of April, 1898, was in the hands of the said American Express Company in the city of New York and kept by it in its vaults
198 in said city specially hired by it for securely and safely keeping the said personal property. Deponent further denies that it is a fact, as alleged by the said Americus C. Daily, in his aforesaid affidavit, that it would be impossible to transact the business of the American Express Company, or any extensive express business in the United States, or elsewhere, unless the said express company had and maintained constantly ready money in very large

amounts or securities readily convertible into cash; and deponent further denies that any such holdings as are in the possession of the American Express Company are necessary to render it able to readily pay for losses, or to give bonds, or to meet cash payments to carriers, or to give to the said express company credit to enable it to get busines-. And deponent further denies that the said sum of over fifteen and one half millions of dollars in securities is held and used by the American Express Company as part of the necessary capital of its business, and that the same is employed in the management of said business or is essential to its further profitable continuance; that deponent says that the facts as to the way in which the said property is held by said express company are correctly set forth in the affidavit of James F. Fargo, heretofore referred to. And deponent further denies that the securities and property held by the American Express Company as aforesaid of the value of up-
199 wards of fifteen and one half millions of dollars, are used and employed in the business of the American Express Company in the city and State of New York; and deponent further denies that the same are used in the management and conduct of the business of the said express company generally. And deponent further denies that the said securities form a part of its business and that they are in constant or any use whatsoever, wherever said company does business, whether in the State of Indiana or in the State of New York, or elsewhere; and deponent further denies that it is a fact that if such securities were held and retained absolutely in the city and State of New York, and were not attainable for the purpose of meeting liabilities and giving bonds in other parts of the United States, and especially in the State of Indiana, that it would be difficult, if not impossible, for the American Express Company to secure and successfully transact an expressage business in the State of Indiana and elsewhere than in the State of New York, but on the contrary thereof, deponent alleges that the fact is wholly otherwise, and that said securities are held by the said American Express Company under the circumstances above stated, and are not necessary, and are not in constant use or any use whatsoever, in deponent's business outside of or within the State of New York.

JAMES C. FARGO.

200 Sworn to before me this 22nd day of September, 1898.

GEO. E. CARPENTER,
Notary Public, No. 25, C. N. Y.

[SEAL.]

201 Endorsement: Filed September 26, 1898. Noble C. Butler, clerk.

202 Circuit Court of the United States, for the District of Indiana.

JAMES C. FARGO, as President of the American Express Company,
vs.
AMERICUS C. DAILY, Auditor of State of the State of Indiana.

UNITED STATES OF AMERICA,
Southern District of New York.

Charles G. Clarke, being duly sworn, says that he is, and on the first day of April, 1898, was, and for many years past has been the treasurer of the American Express Company, a joint stock association organized under the laws of the State of New York, which association, by James C. Fargo, its president, is the complainant herein.

203 Deponent further says that he has examined the annual return made on behalf of the American Express Company to the auditor of state of the State of Indiana for the year, 1898, and that the statements therein contained as to the investments of the said American Express Company in securities on the first day of April, 1898, are true of deponent's own knowledge, except that an error was made in the accounting department of the American Express Company in preparing said figures, the character of which is hereinafter set forth, and which error being corrected, leaves the figures as stated in this affidavit. That the amount of such investments held by the American Express Company on April 1, 1898, was stated to be in said return of the market value of $15,501,344.33 but that the actual market value of the said securities at that time was the sum of $15,143,344.33. That the said investments constituted no part of the said express company's express plant and were not used in any respect in the business of said express company, but were merely ordinary investments held by said company in like manner and for like purposes as similar investments are held by individuals and corporations not engaged in the express business. That said investments on the first of April, 1898, consisted of bonds and mortgages to secure loans on real estate of the actual market value of $159,338.70; of bills receivable consisting of demand loans made to various parties of the actual market value on April 1, 1898, of the sum of $856,490; and of certain railroad and other

204 bonds and stocks of the market value on April 1, 1898, of $14,127,515.63.

That deponent has prepared and has annexed to this affidavit a schedule marked "Schedule A" to be taken as a part of this affidavit, in which are shown specifically the items of stocks, bonds, and securities of said market value of $14,127,515.63. That in said schedule deponent has placed the date at which said securities were purchased by the American Express Company, or, if the same were purchased on several dates, either the dates on which they were

severally purchased, or the dates between which the several securities were purchased. Deponent has also stated in said schedule the par value of all bonds and stock so held by said express company as aforesaid, and has also truly and accurately stated the cost of said stocks, bonds and other securities as specifically itemized in said schedule, and as appears on the books of said American Express Company.

Deponent further says that when a statement was made up in the treasurer's office for the purpose of making up the return to be made to the State of Indiana for the year 1898, a clerical error occurred whereby the clerk making up said statement omitted to note the fact that 2,000 shares of the Lake Shore and Michigan Southern which had been held for several years by the company, and which had cost the company $208,987.50, and which was of the
205 market value of $358,000. had been sold by said company on the 28th of February 1898, and said stock at its said value was erroneously included as being on hand among the assets of said company on April 1, 1898.

Deponent further says that the said error was not discovered by the officers of said company until the affidavits of James F. Fargo, the assistant treasurer of said company, verified herein on the 15th day of September, 1898, and the affidavit of James C. Fargo, the complainant, verified herein on the 22nd day of September, 1898, had been made. That in both of said affidavits the market value of the securities held by the American Express Company on April, 1898, is stated at the sum of $15,501,344.33, whereas the same should have been stated, as the fact was on the day last named, at the sum of $15,143,344.33.

Deponent further says that on further verifying the cost of the securities held by the said company on April 1, 1898, and on checking the same off with the books of said company, deponent has discovered that a further clerical error was made in stating the cost value of 1200 shares of the Delaware & Hudson Canal Co. stock, held by said express company, the cost having been taken in the preparation of the said statement at the market value thereof, namely, $128,400, instead of the actual cost which was the sum of
206 $124,335.88, so that the cost of all the railroad stocks held by said express company on April 1, 1898, which was stated in said affidavit of James F. Fargo at the sum of $4,398,189.59 should have been stated, making allowance for the two errors above referred to, at the sum of $4,185,137.97.

Deponent further says that he has to the best of his knowledge stated the fair market value of each class of securities held by said American Express Company on April 1, 1898, as set forth in Schedule A hereto annexed, and that in case any particular security had no market value, deponent has stated the actual value of said security to the best of his knowledge.

Deponent further says that no portion of such investments of the market value of $15,143,344.33 was on the first day of April, 1898,

or theretofore in the State of Indiana, or used in the business of the American Express Company as a common carrier.

CHAS. G. CLARK.

Sworn to before me this 24th day of September, 1898.

GEO. E. CARPENTER,
Notary Public, No. 25, Co. N. Y.

[SEAL.]

207 Endorsement: Filed September 26, 1898. Noble C. Butler, clerk.

SCHEDULE A.

April 1st, 1899. American Express Company.

Date purchased.	Am't.	Bonds.	Par value.	M'k't rate.	Cost.	Market value.
Ap'l 22/84	$200,000	Dakota Central R. R.		115	$226,062 50	$230,000
Aug. 10/86	200,000	Cincin. Ind. St. L. & Chic. R. R.		101	200,000	202,000
Feb. 24/88	100,000	New York & No. R. R.		126	104,500	126,000
Ap'l 5/88	150,000	Morris & Essex R. R.		141	204,875	211,500
Jan. 23/91	150,000	Kal. All. & Gr'd Rapids R. R.		120	165,291 67	180,000
Dec. 18/91	250,000	Lehigh Valley Terminal R. R.		112	268,680 59	280,000
Jan. 20/92	100,000	Pittsburg, McK'sp't & Y. R. R.		140	128,316 67	140,000
Feb'y 1/92	100,000	Chicago & Western Indiana R. R.		117	116,000	117,000
May 9/92	100,000	Toledo, St. Louis & Kas. City R. R.		86	99,000	86,000
May 18/92	75,000	Mich. Central (Detroit B. C. br'ch) R. R.		120	83,489 58	90,000
June 1/92	50,000	St. Paul & No. Pac. R. R.		126	61,535	63,000
Aug. 26/92	250,000	Central R. R. of New Jersey		114	277,375	285,000
June 1/93	100,000	Long Dock Co.		136	123,500	136,000
Jan. 5/94	100,000	Bangor & Aroostook R. R.		90	90,000	90,000
July 19/96	100,000	Mil. & Lake Winnebag- R. R.		100	100,000	100,000
Oct. 22/97						
Nov. 19/97	200,000	West Shore Railroad		109	218,700	218,700
Oct. 26/97	250,000	Lake Shore & Mich. So. R'lway		102	259,655	255,000
Oct. 28/97	250,000	New York Central & Hudson River R. R.		104½	259,375	261,250
Nov. 18/97	200,000	Mich. Central (Air Line Div.) R. R.		106	218,500	212,000
	$2,925,000					
	No. shares.	Stocks.				
Nov. 25/68 to Jan. 17/84	38,481	American Express Co.	100	125	1,730,312 69	4,810,125
July 31/71 to Jan. 17/84	12,260	Merchants Despatch Trans. Co.	100	100	700,970	1,226,000

WILLIAM H. HART, AUDITOR, ETC.

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Schedule A—Continued.

Date purchased.	No. shares.	Stocks.	Par value.	M'k't rate.	Cost.	Market value.
Feb'y 21/84	333	Intercolonial Express Co	100		$8,334	$8,334
Dec. 11/90	1,000	Michigan Central R. R.	100	106	90,025	106,000
" "	1,000	Chicago & N. Western R. R.	100	119	101,925	119,000
Apr. 22/91	1,200	Delaware & Hudson Canal Co	100	107	124,335 88	128,400
" 22/91	800	Adirondack Express Co	50	50	36,824 80	40,000
" 25/93 to Mar. 28/98	20,689	Boston & Maine R. R.	100	163	3,314,769 63	3,372,307
Feb'y 15/98	3,000	N. Y. Central & H. R. R. R. *R*	100	111	352,875	333,000
Jan. 3/94	108	Wickes Refrigerator Car Co.			3,392 17	3,392 17
Jan. 2/94	2,000	Bangor & Aroostook R. R.	100		200,000	200,000
Apr. 1/95	4,795	National Express Co	100		80,971 90	479,500
M'ch 31/91	½	Int. Jackson's Express			12,500	12,500
Jan. 19/92		Value in United States Hotel, Saratoga, N. Y.			5,000	5,000
July 17/96	15 shrs.	Milwaukee & Lake Winnebag- R. R. (Maintowac Division)			1,207 46	1,207 46
					$9,968,299 52	$14,127,515 63

209 Circuit Court of the United States for the District of Indiana.

JAMES C. FARGO, as President of the American Express Company,
against
AMERICUS C. DAILY, Auditor of State of the State of Indiana. } No. 9620. Chancery.

UNITED STATES OF AMERICA,
Southern District of New York, } ss:

James F. Fargo, being duly sworn, says he is, and on the 1st day of April, 1898, and prior thereto, was assistant treasurer of the American Express Company, a voluntary unincorporated association, having its principal office and place of business in the city of New York, in the State of New York. That deponent has read the annual return made on behalf of the American Express Company
210 to the auditor of state, of the State of Indiana for the year 1898, and that all the statements therein contained are true.

That in item nine annexed to said return, the following statement occurs: "On the first day of April, 1898, this company owned investments in securities which were not and had never been within the State of Indiana, but which were kept and always had been kept, by the company, so long as it had owned the same, in the city of New York where its principal office is situated. No part of said investments, was used by the company on the first day of April 1898, or during the year then ending, in its express business and the said investments, constituted no part of its express plant, but were merely ordinary investments held by the company in like manner and for the like purposes as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies; bills receivable, bonds secured by mortgages upon real estate, and moneys loaned on collateral, which were on the first day of April, 1898, of the market value of $15,501,344.33.

All of said stocks, bonds, mortgages and other personal securities or evidences of indebtedness are in the possession of this company in the city of New York."

211 That all of the above statements are true to deponent's own knowledge.

That the stocks, bonds, and other securities making up the said amount of $15,501,344.33 on the first day of April, 1898, were as follows:

	Market value.	Cost.
$2,925,000 Railroad Co. bonds.....	$3,282,750.00	3,204,855.99
30,904 shs. Railroad Co. stock.....	4,617,914.46	4,398,189.59
56,777 shs. Express & Transportation Co. stock.....	6,579,851.17	2,573,413.39
Miscellaneous stock	5,000.00	5,000.00
Bills receivable, being demand loans to various parties	856,490.00	856,490.00
Bonds and mortgages on real estate loans.....	159,338.70	159,338.70
	15,501,344.33	11,197,287.67

That all of the said personal property above described, which was held by the American Express Company on the 1st day of April, 1898, was acquired by it prior to said date, and that the amount stated as the market value of the said personal property on the said 1st day of April, 1898, was the actual value of said property on said last named date.

That none of said property was on the 1st day of April, 1898, or theretofore at any time in the State of Indiana, nor was any
212 of it used in the business of the said American Express Company as a common carrier. That all of the said personal property of the value on the 1st day of April, 1898, of $15,501,344.33 was at that time and theretofore and still is used only by the said American Express Company as an investment of so much money for the purposes of income as the same would be used by any individual not engaged in the express business. That no part of said property is in any way used by the said express company in the maintenance and operation of its express business, nor are the contracts made by said express company with the various railroad companies over which said express company carries on its business, or payments made under any such contracts in any — dependent upon the holding by the American Express Company of the said amounts of personal property, or any portion thereof. That the business of the American Express Company in shipping bonded freight and express matter under its transportation bonds with the United States Government from seaports to ports of entry in the interior of the United States is but a very small proportion of its daily or yearly transactions, and that such transportation bonds to the United States Government are only accepted by the Treasury Department of said Government upon the said express company furnishing responsible sureties on
213 its said transportation bonds, which sureties are obliged to qualify in an amount twice the sum of such transportation bonds. That the said American Express Company is not called upon and never has been called upon to make use of or put up or pay any part of its property valued as aforesaid at the sum of $15,501,344.33, or any money whatsoever, in connection with its business of transporting express matter in bond.

JAMES F. FARGO.

Sworn to before me this 15th day of September, 1898.
WALTER F. TAYLOR,
Notary Public, N. Y. C.

Endorsement: Filed September 22, 1898. Noble C. Butler, clerk.

214 Capt. HART: I understand that these express companies contend, for instance, that they have an office in Berlin, and that they have a messenger that goes with the express the same as here?

Mr. BAKER: The facts on that are stated in this affidavit. I only read a part of the affidavit: I thought it was too long for the board. That is not quite as tangible a proposition as the other because of the enormity of the thing: it has such a large mileage abroad. This affidavit will show that the express business is carried on abroad just the same as it is in this country since the fall of 1897, and not before, and that no other express company does business in that way. There was some evidence before the board from Wells-Fargo as to how the express companies did business abroad. They did not properly state how the American Express Company did business at the time that statement was made, and that statement of the Wells-Fargo people is what inspired this part of that affidavit.

Judge BUSKIRK: As I understand it, you expect us to adopt your mileage basis.

215 Mr. BAKER: I think you ought to, but I don't suppose you will.

Mr. WRIGHT: That fourteen million and some odd dollars is the surplus?

Mr. BAKER: It is the accumulated profits: it is more than fourteen million: that much personal property, and the real estate. I don't suppose there is any question about that: I did not read that part of the affidavit: the real estate that is used for rental purposes. In other words a company with five million dollars of property has enough for the express business.

Mr. WINGATE: Is your personal property taxed in the cities where it is located?

Mr. BAKER: If the officers do their duty, just as you do, and I expect they do.

Capt. HART: You have not submitted any affidavit that this property is taxed in New York, have you?

Mr. BAKER: I don't think there is anything on that subject. It says it is there. I imagine that is not a proper subject of inquiry for the taxing officers in Indiana. I assume that as much prop-

216 erty as that is, and in companies where their ownership would be registered, so much of it being railroad stocks, I imagine it could not escape taxation, if there was any disposition to have it do so.

Mr. TAYLOR: The trouble about Mr. Baker is that what he knows about this matter is what he has been told by somebody.

Mr. BAKER: That is so with most of the officers of the company; they cannot know everything. I might ask you what kind of an

argument was made in one of your cases at which you were not present, and you could tell me, although you did not hear it.

Attorney General TAYLOR: The statements that have been made have been made from affidavits filed in a case in the United States court, and I understand are not original affidavits in this case, and do not apply to the assessment for this year.

Mr. BAKER: I do not claim those affidavits were prepared to present to this board, but I wanted the board to know the facts, and offer to make affidavit, or any kind of proof to these facts that the board may wish. I did not suppose it was a question of fact
217 the board was disagreeing with us on, Mr. Taylor.

Attorney General TAYLOR: Now, therefore, as to the assessment for this year, I understand, Mr. Baker, you haven't any affidavits, or anybody here to testify as to the facts?

Mr. BAKER: They remain the same. I stated that we were willing to be sworn on information and belief, and produce any witnesses the board wants, if it wants the witnesses, or know the facts.

Attorney General TAYLOR: I think there is a question here of considerable importance, and if you have anybody that can testify as to the facts that have been asked here—the questions that have been asked and the facts set forth in this statement, it would be well to do it, but you can answer some questions, no doubt, from the fact that you are the attorney of the company. I would like to ask if the National Express Company does business in its own name in Indiana?

Mr. BAKER: Yes sir.

Attorney General TAYLOR: It takes goods on its own bill-heads?

Mr. BAKER: That is my understanding of it.

Attorney General TAYLOR: And gives receipts in its own
218 name, and not as agent?

Mr. BAKER: I think so.

Attorney General TAYLOR: And it operates lines of its own.

Mr. BAKER: In Indiana?

Mr. TAYLOR: Yes.

Mr. BAKER: It operates them in that way, none other.

Mr. TAYLOR: If it has any agreement at all it does not appear on any of their literature?

Mr. BAKER: Not that I know of.

Mr. TAYLOR: Or any of their bill-heads, or anything of that sort—way-bills or anything of that sort?

Mr. BAKER: No, sir.

Mr. TAYLOR: Do you contend that it, as a national company, ought not to have these assessments made against it individually?

Mr. BAKER: It is not a matter of very great importance, but I simply contend that if the American Express Company owns that business, owns the property the National uses, and gets all the profits, that it is therefore, naturally, an addition to the lines of the American Express Company. If the National Company, on the mileage basis, could only be taxed $50 a mile, by reason of its business else-

where, and miles elsewhere, I think that ought to be added
219 to the American, and put on whatever the valuation of their mileage is.

Mr. TAYLOR: But wherever the National Express Company operates the American does not?

Mr. BAKER: In this State?

Mr. TAYLOR: Yes.

Mr. BAKER: That is true, as I understand it.

Mr. TAYLOR: Then if the National is assessed for the lines it operates, and the American for the lines it operates, there would be no harm done either company?

Mr. BAKER: It is a question purely of logic I think. I think, in other words, the value of the American plant, is what makes the value of these miles in this State.

Mr. TAYLOR: Now, let us go to the American statement. Two years ago the American made a sworn statement that it had 34,000 miles of routes throughout the world, in round numbers?

Mr. BAKER: Does it say "throughout the world?"

Mr. TAYLOR: Total length of the lines or routes over which it transports merchandise, freight or express matter.

Mr. BAKER: That leaves it to inference whether it is meant "throughout the world," or in the United States.

Mr. TAYLOR: The next question, the total lengths of the
220 lines or routes over which it transports merchandise, freight or express matter.

Mr. BAKER: That leaves it to inference whether it is meant "throughout the world," or in the United States.

Mr. TAYLOR: The next question, the total lengths of such lines or routes outside of the State of Indiana, 33,000; and the total mileage in Indiana is the difference; now, the next year, in 1898, it jumped to 160,000 miles.

Mr. BAKER: That is right.

Mr. TAYLOR: A sum so utterly enormous, and out of all proportion to the growth of any company, without the purchasing of new lines, that, of course, the board were staggered by it. Now, Mr. Baker, do you know in what way this express company handles its business in foreign countries and ocean traffic, and how it did in 1898, different from what it did in 1897?

Mr. BAKER: I only know from these affidavits, that they made an entire change in their foreign business.

Mr. TAYLOR: But it don't say how?

Mr. BAKER: I think the affidavit shows how they do their foreign business; I have not read that affidavit recently, and I did not take the time of the board to read it this morning; it is before the board though.

221 Mr. TAYLOR: The affidavit does not say that any of this property is taxed in foreign countries?

Mr. BAKER: It don't say anything about that.

Mr. TAYLOR: You do not know that this one hundred and

twenty odd thousand miles of extra mileage, put on in one year, that a mile of it is taxed in any other country of the world?

Mr. BAKER: I don't know; it is largely ocean mileage

Mr. TAYLOR: And of course, it is not taxed on the ocean by anybody?

Mr. BAKER: I don't know anything about that.

Mr. TAYLOR: Isn't this line an imaginative mileage, and an imaginative method of taxation?

Mr. BAKER: That is a question of law we will leave to the court.

Mr. TAYLOR: Can you produce anybody here before the board adjourns that can explain that mileage?

Mr. BAKER: If the board thinks that the affidavits produced are not sufficiently explanatory, we can get further evidence on that subject, as specific as the board wishes.

Mr. TAYLOR: There is no chance to cross-examine the witnesses, is the trouble.

Mr. BAKER: I will try to comply with any request the board makes in the way of production of witnesses. The chief officers of this company are in New York, and I do not know that they
222 are in America at this minute. We have a general manager in Chicago.

Mr. TAYLOR: These affidavits that your company have made were made by a gentlemen who lives in Cleveland?

Mr. BAKER: You mean the returns; yes, because this State is in his division.

Mr. TAYLOR: Wouldn't he know about this?

Mr. BAKER: I don't suppose he would know as much as the people I am talking about, only by hearsay because — is an officer of the company.

Mr. TAYLOR: This company has 180,000 interests?

Mr. BAKER: Shares.

Mr. TAYLOR: It is not a corporation, they do not call them shares, but interests.

Mr. BAKER: That is all right; the statute of New York don't call them shares, and that is why they do not.

Mr. TAYLOR: It is a partnership; it is not a corporation?

Mr. BAKER: Yes that is what it is.

Mr. TAYLOR: The stock is quoted at 140.

Mr. BAKER: Is that this year's report you are reading from?

Mr. TAYLOR: Yes, that makes the property of this company $25,200,000. Now, if that is divided up on a basis of 163,000
223 miles, the part that would go to Indiana would be exceedingly small, even if we had all of it. You say you do not know whether or not this property is taxed any place else. If you would add the mileage of all the States of the Union together, you would then have only about one-fifth of the total mileage of this company. You had 34,000 miles in 1897 in the United States, presumably?

Mr. BAKER: That is what is meant.

Mr. TAYLOR: And now you jump to 163,000 miles, so that we

have about one-fifth of all the mileage in the world in the United States, so that is every State would tax its proportion of the mileage of this company, there would be only one-fifth of the company's property taxed?

Mr. BAKER: You must remember, in addition to that, that Indiana, and every other State in the Union, presumably, taxes all the property that is in the State, in addition to this; every piece of property, personal and real that we have in this State is taxed just like your property is taxed.

Mr. TAYLOR: Now, it becomes a question of fact, doesn't it, Mr. Baker, whether or not this property you speak of, fifteen million dollars of personal property, bonds, stocks, notes &c., and real estate, is in any way used in the express business?

224 Mr. BAKER: Of course it does, and you have no affidavits before you, and no evidence that contradicts mine, and you will not have.

Mr. TAYLOR: In your affidavit filed in this court, which you have read, by Clark, you set out the value of these bonds and stocks owned by this company are worth fourteen million dollars?

Mr. BAKER: Yes.

Mr. TAYLOR: And in the statement of 1899, which you report this year, you state the total value of these?

Mr. BAKER: I would not be able to answer from memory; the record is there, and whatever it states is correct. I think the $16,000,000 includes the real estate.

Mr. TAYLOR: I think this increased mileage is so speculative, that this board ought not to give any special consideration to it. The Supreme Court of the United States in discussing this express question, and every conceivable question that is presented here, except this one of mileage, and the one that Mr. Baker suggests—and that is that the personal property ought not to be charged to the company—was taken up and passed on, and decided in a most elaborate opinion by the Supreme Court of the United States. The case went up from Ohio; the Indiana case went up with it,

225 and a Kentucky case went up with the other two. The Ohio case was the first one filed, and it took the right of way. The company claimed that they should only be taxed on their personal property in the State of Ohio, amounting to about $34,000, while the net earnings in that State were $300,000, and the opinion of the Supreme Court was a strong and vigorous one, and on the petition for a hearing again, the court rendered another very elaborate opinion, and they held that the assessing officers have a right to assess these companies on a mileage basis. That has been the rule in the United States ever since. They are to be assessed the same as telegraph lines, and railroads, and Pullman cars; it is the same proposition. But now, the Supreme Court, in rendering the opinion, say they must presume that all of the personal property of the company goes to make up its assets, and is used in the business, presumably, and they discuss precisely the question Mr. Baker here presents, and the courts says, presumably all this property is used, and must be taken

into consideration in the conduct of its business. Now then, in this case, Messrs. Baker & Daniels say, because the Supreme Court say presumably that all this business is used in its traffic, and because the Supreme Court in the minority opinion——

226 Mr. BAKER: Judge Brewer's decision on the petition for a rehearing, is the only opinion I quoted from.

Mr. TAYLOR: In the original case they discussed the question, and in the minority opinion in the original case they also referred to it, and when it came up on the petition for a rehearing, they referred to it again, and it was because of the way the court handles the question there, this question is again presented, because it was not squarely decided——

Mr. BAKER: The way it was handled in the majority opinion?

Mr. TAYLOR: In the petition for a rehearing.

Mr. BAKER: That is right.

Mr. TAYLOR: It was discussed in the original opinion and then in the minority opinion, and on the petition for a rehearing it was again discussed. There is now a temporary restraining order issued by Judge Woods against Mr. Daily, and now against Capt. Hart, the successor of Mr. Daily. That still stands, and there will probably be a temporary restraining order issued against Capt. Hart, as auditor, and we have the evidence by which we will file the

227 answer, and present the case, just as soon as Judge Woods can hear it. Now, as I say, they filed affidavits in the United States court, those that have been read here by Mr. Baker, in which they raised the question that these fifteen or sixteen million dollars of personal property, bonds and stocks, ought not to be assessed throughout the United States, because they are not used in the express business.

Mr. BAKER: Ought not to be assessed in Indiana.

Mr. TAYLOR: It means all other States except New York, because they say the stuff is there—ought not to be assessed in any State except New York, because the personal property is all in New York, and not used in the express business.

Mr. WINGATE: Do you know whether or not the mileage of this National Express Company is included in your mileage reported here?

Mr. BAKER: It is stated separately. Both statements show the full facts, so that the board can treat it one way or the other just as they please. They are separate statements, but each shows the condition of things, and there are separate footings for the mile-

228 age operated by the American, and that operated by the National on the American statement.

Mr. TAYLOR: I will now introduce the affidavit of Mr. Daily, the auditor of State.

Mr. BAKER: Let it be shown that the affidavit of Mr. Daily was filed before the ones introduced by us.

Whereupon the affidavit of Mr. Daily, heretofore mentioned, is put and read in evidence in the words and figures following, to-wit:

229 UNITED STATES OF AMERICA, }
District of Indiana. }

In the Circuit Court of the United States for the District of Indiana.

JAMES C. FARGO, as President of the American Express Company,
vs.
AMERICUS C. DAILY, Auditor of State of the State of Indiana. } No. 9620. Chancery.

Affidavit of Americus C. Daily, Defendant.

Americus C. Daily, being duly sworn, on his oath, says: That he is the auditor of state of the State of Indiana, and the defend-
230 ant herein; that he is informed and believes that the American Express Company is a copartnership, to-wit: a joint stock association, operating under the laws of the State of New York, and engaged in the express business, consisting, as averred in the bill of complaint, of more than three thousand members, or co-partners, some of whom, as affiant is informed and believes, are, and at the time of the filing of the bill of complaint herein and the issuing of process thereon, were resident citizens of the State of Indiana; that for many years the defendant has been engaged in the express business, and for a number of years has accepted express matter for shipment to and from various parts of the United States of America, and from points in the United States to a large number of civilized countries in Europe, Asia, Africa, North and South America, and in Australia, and to islands in the Atlantic and Pacific ocean; that affiant is informed, and believes, that the Adams Express Company, and the United States Express Company are engaged in the same business, and for a number of years have accepted consignments of freight and express matter to substantially the same foreign countries as the American Express Company does and has done:

And affiant says that the Adams Express Company has returned to affiant, as auditor of the State of Indiana for the year 1896,
231 as its total length of lines in miles, 27,300; for the year 1897, 29,940; and for the year 1898, 29,940; that the American Express Company has returned as its total length of lines, for the year 1896, 34,220; for the year 1897, 34,957; and for the year 1898, 163,063 miles; that the United States Express Company has returned as its total length of line for the year 1896 29,813.17 miles; for the year 1897, 27,786.83; and for the year 1898, 151,580.

And affiant says that he is informed and believes that during the three years named, the three companies named have transacted a precisely similar business, doing business for and in each of said years in precisely the same way, and shipping freight and express matter to foreign points throughout the world in substantially the same manner as at present; and that he is informed and believes that the total mileage of the three companies named, and their facil-

ities for doing business at home and abroad have not been materially altered during the three years above-named;

Affiant says that he is informed and believes that it is the custom of all the three companies to consign expressage to foreign countries as freight on fast steamers, such expressage being delivered by such steamers, at London, Berlin, Paris and possibly a few other
232 large cities in foreign countries, to agents of the express companies, which contracted for the shipment, but that in England all such express matter, not delivered directly by the London agent of the express companies, is transferred, under contract, to Sutton & Co., who are engaged in the transfer and expressage business in Great Britain and Ireland, and is forwarded by Sutton & Co., under contract with the original express company, making shipments, to its destination: that in the German Empire similar arrangements are made by said express companies, and each of them, with Heinrich & Becker & Company to forward for such express companies, and each of them, freight and expressage, throughout the German Empire; and that, in France, and other European and foreign countries, arrangements have been made by which other companies and individuals, engaged in a fast freight and expressage business, forward freight and express matter for said several express companies, under contract by which such foreign express companies are paid by said American express companies for such forwarding;

And affiant is informed and believes that outside of a very few large cities, no one of the three express companies named has any employees directly in its pay, nor does it, through its own servants or employees, forward or deliver freight or express matter;
233 And affiant is informed and believes that no where outside of the United States does the complainant maintain any express lines or routes in the common acceptation of the term, but that instead of maintaining and operating express lines and routes, the complainant forwards its freight and expressage matter outside of the United States, wholly by and through other express carriers engaged in a similar business, who accept and forward and deliver freight and expressage matter from complainant for hire.

And affiant says that he does not know whether, as stated by complainant, or not, complainant's associates possess real estate in New York, Illinois, Massachusetts and other States of the value of three million dollars and over, and stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral, of the value of $15,501,344.33 on April first, and of personal property used in the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c., of the value of $1,505,738.72, but affiant says that all of said real estate was reported to the State board of tax commissioners of Indiana, of which affiant is a member, and was considered in assessing the value of the American Express Company's taxable property in the State of Indiana, as said board was required by law to do;

234 And affiant says that he is informed and believes that if the American Express Company possess stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral of the market value of fifteen million, five hundred and one thousand, three hundred and forty-four dollars and thirty-three cents, on April 1st, that all of said personal property was held and employed and used by complainant for the purpose of transacting its express business, and that such personal property and securities were necessarily and properly employed in maintaining and continuing said business.

Affiant says that he is informed and believes that the American Express Company transmits daily, in the regular course of its express business millions of dollars in money, for the loss of all of, or any part of which, its members and share holders are individually liable; and that it has contracts with railroad companies and other carriers, calling for payments from day to day of large amounts of money; that it does a very large business in shipping bonded freight and express matter, under bond to the United States Government, from seaports to ports of entry in the interior of the United States, for all of which freight and express matter, and the proper

235 delivery and accounting for the same at the customs houses in interior parts of the United States, the American Express Company is required by the United States Government to give bond, such bonds being for very large amounts, and requiring to be constantly given and constantly renewed;

And affiant says that he is informed and believes that by reason of the individual liability of the co-partners transacting business as the American Express Company, it would be impossible to transact the business of such company, or any extensive express business in the United States, or elsewhere, and by reason of the necessity of constantly giving bond to the United States Government, it would be impossible to continue a great portion of the profitable business of said co-partnership, unless said co-partnership had and maintained constantly either ready money to very large amounts, or securities readily convertible into cash, such holdings, and the ability readily to pay for losses and to give bonds and meet cash payments to carriers, being absolutely essential to an express company — the credit necessary to enable it to get business.

And affiant says that he is informed and believes, and therefore makes oath, that all of said sum of over fifteen and a half

236 million dollars in securities, is held and used by the American Express Company as a part of the necessary capital of its business, and is employed in the management of said business, and is essential to its further profitable continuance;

And affiant says that he is informed and believes that so much of the American Express Company's capital as is invested in securities of the sort named, is used and employed not only in and for the city and State of New York, but generally, in the management and conduct of the business of said co-partnership, and that such securities form a part of its capital, and a part of its business, and are in con-

stant use wherever said company does business, whether in the State of Indiana, or in the State of New York, or elsewhere, and that if such securities were held and retained absolutely in the city and State of New York, and were not attainable for the purpose of meeting liabilities and giving bonds in other parts of the United States, and especially in the State of Indiana, it would be difficult, if not impossible for the American Express Company to secure and successfully transact an expressage business in the State of Indiana, and elsewhere, than the State of New York.

237 To all of which this affiant makes oath upon information and belief.

A. C. DAILY.

Subscribed and sworn to before me this 29th day of August, 1898.

NOBLE C. BUTLER,
Clerk U. S. Courts.

Thereupon the board adjourned until Tuesday, July 25, 1899, at 10, o'clock, a. m.

238 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1899, p. 292.)

INDIANAPOLIS, THURSDAY, *July* 27, 1899—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: James A. Mount, governor, chairman Union B. Hunt, secretary of state, W. H. Hart, auditor of State, Thos. B. Buskirk, J. C. Wingate, commissioners. Frank Martin, deputy auditor of State, secretary of the board.

The American Express Company.

Mr. Edward Daniels, counsel, and L. W. Fargo, assistant general manager of the American Express Company, appear before the board and the following proceedings are had.

239 Mr. DANIELS: The suggestion was made that Mr. Antisdel, the general manager of the American Express Company, might give some information with reference to the foreign mileage of this company, but he is absent, and Mr. Fargo, his assistant has come down to let the board know as much as he can.

Mr. FARGO: Gentlemen, I am here I believe to explain the absence of Mr. Antisdel. I am not particularly aware of just what information you want, but I shall be pleased to answer any question, and give any information that your inquiries are directed to. As Mr. Daniels has suggested one question is the European business. Just what is wanted, and what is to be known with regard to the European business, I don't know, and if some one will make inquiry as to what they would like to know, I would like to know.

L. W. FARGO being first duly sworn testifies as follows:

Questions by Mr. MOORES, deputy attorney general:

Q. *Mr. Fargo, you have returned one hundred and sixty*
240 odd thousand miles of mileage for this year and last year for your company, and I wish you would apportion that for the board.

A. I can not do that; I don't know. You see I am not living in New York where the mileage reports are kept, and the mileage is made up. I would not be able to learn from yesterday afternoon until this morning, and I do not know how it is apportioned. It includes the European mileage, however. That is what is called the ocean mileage, and mileage for the business we transact in Europe.

Q. Does it not also include mileage to and from Australia, and Asiatic, and African and South American ports?

A. That I can not tell you at all. I can not tell you at all how it is apportioned. The only one that could tell you is Mr. Antisdel, and he is in New York, the one who made up the report.

Q. How many agents have you outside the United States and Canada?

A. Well, you know in this country we have agents at large places and small places, and at the large places they are engaged exclusively in the express business, that is, they are not engaged in any other business, and in other places our agents may be in the
241 retail trade of some kind, and also handling our business, and also we are joined with the railroad companies, that is, the railroad agent is the joint agent for both the railroad and the express company. The situation is just the same in Europe. We have exclusive agents, and agencies with a full equipment, such as we have here in Indianapolis. We have our own buildings our own agents, route agents or traveling agents, the clerks and the wagons and the horses, exactly as you have it here, and we have other agencies who are joined with some business, and also those which are represented — a railroad company also, and also bankers. We have in the neighborhood of fifteen hundred agencies in Europe which are about the same as the agencies here in this country. In fact the greater portion of them average about the same.

Q. How many agencies have you in Africa?

A. I can't tell you. These points I would be only able to tell from reading the records myself. I don't know even how many agents we have in this country.

Q. Can you tell how many you have in Asia, or Australia, or South America?

A. I can't; we have agencies there, but I can't tell you.

Q. You understand all the way through that I am not ask-
242 ing you about the banking business?

A. Oh no.

Q. I don't care anything about the banking agencies, because I

know there are hotels in every city of Europe that do a banking business with you?

A. We don't include those agencies.

Q. How many agents, approximately, have you in Europe, who do an express business for you?

A. I shall have to answer approximately. I don't know, but the record will show. Off hand I should say that we have in Europe as freight agents, men who handle freight for us, from place to place locally, and in this country, international business, I should say 200 exclusive freight agents, and no doubt the balance of them may do a freight business. I dare say they do; I don't know that.

Q. You know the Adelpha hotel in Liverpool, for instance.

A. That is not an agency at all. I say where the banker represent- us in every way.

Q. With what trans-atlantic lines have you contracts for transportation?

A. I couldn't tell you that.

Q. Have you such a contract with the American line?

A. I don't know; that would be local New York information, I would not know about.

243 Q. You don't know then of any contract with any trans-atlantic company?

A. No sir, I would not know that; the western department would not know that.

Q. Do you know whether or not messengers accompany express matter shipped across the Atlantic?

A. Frequently, no doubt.

Q. I want to know what you know.

A. Well, I know this; you asked whether the freight goes by exclusive agents or messengers.

Q. I want to know if a messenger accompanies your freight?

A. The same way as messengers accompany the freight in this country.

Q. I mean messengers employed by your company in the same way that messengers are sent upon the railroads from one town in this country to another?

A. Yes, because we have hundreds of tons of freight carried by railroad employees here. We do not, by any means, in all cases employ exclusive messengers to take care of freight on railway trains. The railway company handles it, and to a great extent the steamship employees take care of it as the railroad employees take care of it in this country. It is the same system.

244 Q. What I want to know is if you send any freight by a vessel from New York to Southampton, whether a messenger in your employ accompanies the freight or not?

A. Well I don't know.

Q. What about shipments of gold, does the messenger go with that, or is it locked in ship's safe, or in your safe?

A. That I don't know.

Q. How many employees has your company in the city of London?

A. I should say fifteen without knowing.

Q. How many delivery wagons do you use in London?

A. I think about ten, and we have connections,—this I don't know actually, but I think we make the exterior deliveries beyond the special limits, as in this country by suburban express.

A. That is by English express companies?

Q. Suburb express companies; I suppose you have city expressmen here who deliver outside of the limits, where we do not deliver, by their own wagons.

Q. Do you deliver only within the city of London, or do you deliver generally over the count-y there?

245 A. Oh I don't know; that is detailed information, that I don't suppose that anyone but the local agent there knows.

Q. For instance, do you deliver freight to Kingston?

A. I don't know; I haven't the remotest idea, or no means of knowing.

Q. Do you know what the nature of your contract is with Sutton & Company?

A. Not any that I know of. We do not do our European business at all as the other express companies do. We are responsible from St. Petersburg to Indianapolis. We handle our own freight. We have no middle men. We have our own employees and our own agents in Europe, and we do not do our European business with intermediate men, as other express companies do. We are the only company that has our own equipment.

Q. To what ports in England do you send freight from New York?

A. Why to Liverpool and Southampton; others perhaps. That is all book knowledge of course; no individual would be able to tell you that.

Q. How is your London freight taken from Southampton to London?

A. I don't know.

Q. Have you or not a contract with the London & South-

246 western?

A. That I don't know.

Q. Have you one with the London and Northwestern in Liverpool?

A. I would not know that at all.

Q. Have you any contracts in short, of any sort with any English railroad?

A. I couldn't begin to tell you from my own knowledge.

Q. Have you any contract with Heinrich Becker and Company in Germany?

A. I don't know.

Q. Or with any other German express company?

A. No information that is given to the operating department or that is published, would show any contract, or any relation to any subordinate express. We handle it in our own name entirely.

Q. You could not know whether it was handled by Backer or Sutton or by you entirely?

A. No I couldn't.

Q. How many agents have you for the delivery of freight outside of London, in England?

A. Mr. Moores I could not tell you that. Those questions could not be answered without research. I couldn't tell you in this
247 country, positively, without research.

Q. Have you any agents outside of London, in England, who deliver freight?

A. Yes sir.

Q. Name some place outside of London, or in the United Kingdom?

A. Liverpool, this is merely book knowledge I have of this; I don't know where else.

Q. Do you know whether you have one at Southampton?

A. I don't know; as I say I couldn't tell you in Indiana without research as to what we do at all.

Q. Who does know about this European business?

A. No one would be able to answer the questions you ask without research. The man in Europe, of course would; I mean in this country.

Q. To what European points outside of Liverpool and Southampton do you consign freight?

A. That I don't know; I could not tell you that.

Q. Do you know whether you consign freight to Hamburg?

A. Oh yes.

Q. Directly from New York?

A. Oh yes.

Q. How about Havre?

A. Yes, I happen to know that.

Q. How about Genoa?

248 A. Yes, however directly or not by water route there I am not sure; very likely; I am not sure about that.

Q. Have you agents at Queenstown and Glasgow?

A. I think so.

Q. Do you know about Moville, it is in the north of Ireland, it is the port Londonderry?

A. No sir, I don't know about that.

Q. And you know nothing about the continent, except Hamburg, and Havre, and possibly Genoa?

A. Yes, possibly; but there is a publication that gives this whole information, just as to what our European connections are. It is a publication to instruct the public and I might have brought it.

Q. I will loan you one. (Handing witness book.)

A. This is a year ago. There may be some changes. This does not give the local information however. There is an additional book of information to be published this year which gives the regular offices we have established on the continent. It is not given here. For instance our office in Liverpool. It shows London and

other places. That is merely a guide and rate for the agent to follow as to the countries. That is the rate tariff, but does not give
249 the information as to the offices.

Q. Are freights for South America sent direct or by way of Liverpool?

A. Most of the freights which are sent from this country of all kinds go to Liverpool. It is a better and shorter route than going direct from this country.

Q. Do you deliver goods at Buenos Ayres?

A. We undertake to haul them to that place.

Q. The mileage from New York to Buenos Ayres is estimated in this at 162,000.

A. I don't know; I don't know what that is made up on, that 162,000.

Q. If it is estimated on that do you include the mileage from New York to Liverpool and from Liverpool to Buenos Ayres?

A. I don't know what is done, but if I were making it up, if that was the route taken, that would be the mileage. In fact that is the usual route to Buenos Ayres for all companies. That is the usual way for forwarding freights.

Q. All freights for South Africa, for Cape Town and Edinburgh and other South African points, are also sent by way of Liverpool, are they not?

250 A. Well, I should think so; there is no regular route of steamers from this country to Cape Town, but there is from Liverpool.

Q. Have you annual contracts with South American and South African transportation lines?

A. I don't know.

Q. Have you any permanent agent in the employ of your company in South America or South Africa?

A. Africa, yes sir.

Q. Where have you agents in South Africa?

A. I merely happen to remember that we have one at Cairo.

Q. Where else in Africa?

A. I don't remember.

Q. You don't know whether messengers accompany freight to South American and South African points from Liverpool?

A. No I don't.

Q. Is there any material difference in your foreign business between 1897 and 1899?

A. Oh yes, a very material difference.

Q. In what respect is the difference?

A. We were approaching and preparing to start out with our European business full fledged previous to 1897. We had a
251 number of banking representatives, but we were not really started in the freight business. I think it was in 1897 and 1898, that we perfected the same service in Europe that we have here, practically. We carry business locally between points in Europe as well as between the countries. We have our horses and

wagons and fully equipped offices in a number of larger cities, and we have main agencies for handling freight as we have in this country, and in a great many of them we have traveling auditors and routes agents, and freight agents there who are there constantly, the same as in this country. In other words, at the present time there is essentially no difference in the transaction of the business we do over there, and the transaction of business here. The operating is done the same, and we are the only company that do business in that way in Europe. Of the others I think about 10 or 12 years ago, the Adams Express Company experimented, but only in a small way and gave it up. They don't think there is anything in it. We do, and we are now the agents for the New York Central system of railroads. They have freight agents also in Europe. So that without a thoroughly organized express system, as we have it here, we would not be able to conduct at all the business we
252 are to-day doing in Europe.

Q. Could I send a 20 pound package of freight by the American Express Company from Stuttgart to Dresden?

A. Yes, likely, if we have got offices there. I don't know whether we have or not; if we have we could; I don't happen to know.

Q. Do you know on what lines of European railways you carry freight?

A. No, I couldn't tell you in this country on what lines of railways we carry freight; I don't remember; there are so many.

Q. How many lines are there in Europe on which you carry freight?

A. I don't know sir.

Q. State whether or not you have any contract with the German government for carrying freight on the German government railways.

A. Well, I might happen to know that, but I would not officially know; but I don't happen to know it.

Q. You don't know whether you have any contract with them or not?

A. I don't know it, no sir.

Q. Who owns the railways in Austria?

A. I think the government.

Q. Have you any contract with the Austria-Hungary
253 government?

A. I don't know as to that.

Q. Do you carry freights between points in Hungary?

A. That I can't tell you. I dare say we do. It does not seem to be given on this list. This is a year ago though.

Q. What I want to know is, do you know whether freights are accepted between points in these foreign countries or not?

A. Oh yes.

Q. As well as from points in the United States to foreign countries.

A. Yes. As I said a moment ago we transact a local business there.

Q. Do you know that?
A. Yes I know that.
Q. How extensive is that local business?
A. That I don't know. That is a difficult question to answer. I can't tell you. That is a most difficult question. I don't see how I could answer. I don't see how I could have information. No one in this country would have definite information as to that. It is increasing of course, Mr. Moores. This having been going
254 only two years we are not doing as much business there, of course, as we are here, but it is increasing constantly.
Q. Do you know whether or not the distance between Liverpool and New York is measured as part of the mileage of your country in that 162,000 miles returned to the board.
A. I don't know any of the items at all in that 162,000. Speaking about the carrying of local freights between points in Europe, you can see the demand there would be on us, American travelers. They depend very largely on our service to transport their baggage, and their personal purchases and things of that kind from one place to another, constantly.
Q. How extensive a banking business does your company do?
A. Well it is small yet, but it is increasing.
Q. How large is your business in drafts, and travelers' checks and such things?
A. I don't know.
Q. You don't know what capital of the company is used in the banking business?
A. I can not tell you definitely. It changes probably from hour to hour and from day to day. The treasurer would be the only one who would know that.
255 Q. What is your district over which you are assistant manager?
A. The western department, from Buffalo west and south.
Q. How many bonds are you in the habit of executing, or how many bonds has the company in use in your district, to you- knowledge?
A. What sort of bonds?
Q. To the Government and to the railroad companies, to guarantee the performance of contracts for the shipment of goods, and such things?
A. We give no bonds.
Q. You give no bonds whatever?
A. No, sir.
Q. To the Government in your district?
A. No.
Q. For the shipment of bonded freight.
A. You mean the immediate transportation. We do not give our bond. It is not our liability. We go out as any one else, and if there is a bond to be executed we make no guarantee; I can't imagine any guarantee being made, and if there is any particular case

in which a bond is given by us to the Government, it is procured the same as a man in business.

256 Q. Do you buy all the bonds used by you?

A. Yes, any bonds given would be executed and made in the trustee's office, and I know—at least that is my belief and information that they go and get their bonds as anyone else does.

Q. You know nothing about the bonds even in your own department.

A. There are no such things. Excepting this one you speak of I never heard of any bond. To the Government that is all. I think that is all.

Q. What written guaranty, or surety, do you give the railroad companies on their contracts.

A. None at all.

Q. The company is accepted then without any bond on all contracts.

A. Oh, yes.

Q. All other bonds you have to give in the course of litigation are purchased I suppose; you have no arrangement for them.

A. I don't know. I never saw a bond given. The lawyers may attend to that, but I never saw them. We didn't get any that I know of, which is true of the western department. I am perfectly familiar with that. I am also approximately familiar with

257 the whole country. It is all conducted in the same manner. But this European business is in charge of European representatives, and there is no one on this side who can give you much of the information you ask.

Q. What balance does your banking business in Chicago require to be carried there; how much of a balance?

A. I don't suppose there is any balance at all from day to day.

Q. You keep no bank account?

A. Yes, but then there is very little balance at the end of the day. We deposit of course a great deal of money, and we draw nearly all of it every day.

Q. So that you carry no balance there?

A. Not much, it is very small.

Q. Does your business ever require you to negotiate the paper of the company in Chicago?

A. Oh yes, we have our drafts, and our travelers' checks. You mean negotiate for money?

Q. Yes.

A. If there is a balance due we give our treasurer's draft, the same as anyone would do in business, on the main office.

Q. You know nothing about the financial management in New York?

A. No, not at all.

258 Q. When judgments are recovered against the company the money comes from New York, I suppose, to meet them?

A. Oh no, not necessarily. Of course, we have money on hands,

to a greater or less extent, at all offices, and if we have sufficient we pay the judgment locally.

Q. Does that have to go through the New York office?

A. Eventually of course it is reported and rendered back in the statement from the local office, but they don't necessarily have to go through the main office first.

Q. What do you know as to any bonds or surety that may be required on your European contracts?

A. Not a thing.

Q. And those with steamship companies.

A. I don't know, not at all.

Q. How long has your company been accepting freights for Europe?

A. Well under this regular system of doing business we have been now since 1897. A good many years ago through intermediate European express companies we have taken freight from the interior, and acting as forwarding agent. For a great many
259 years all companies have been doing that in a desultory sort *sort* of way. We do not do that now. We are in the regular European express business.

Q. Do you know whether freights are accepted by your company between Melbourne and Sidney?

A. No, I don't.

Q. Do you know as to South African points?

A. No sir.

Q. Do you know as to India?

A. No sir.

Q. Then you only know that in some countries in Europe some freights of that sort are accepted by your company, but beyond that, you do not know, as to the rest of the world?

A. No. As I say, no one could answer those questions without looking it up. I could not even in this country. It is a large territory and no one could have a personal knowledge of that without research. It could not be done.

Q. You know of no country outside of the United States and Canada, and some of the European countries in which you think you do the same business in the same way that it is done in this country by the American Express Company. I refer to the express business and not to the banking business.

260 A. I know what you mean. The express business, as it is carried on here in all its essential characteristics, as we have before said, is carried on between certain places on the continent and Great Britain. Now, I know of no reason why that same thing is not done between all offices all over Europe. I do not see why it should not be. I don't know whether it is done or not.

Q. Now I asked with reference to the outside of Europe.

A. Well, I should be very much disappointed if a person were not able to send a shipment from Cairo to Cape Town in the charge, and in the responsible charge of the American Express Company. By that I mean that where we have offices and agencies, and I dare

say we have in Cape Town—I know we have at Cairo, there would be some special reason, but I am not aware of any why you could not undertake to carry freight between those two places just the same as we do between Indianapolis and Louisville.

Q. You don't know whether such freight would go by Gibraltar or by Aden?

A. No, I don't. I see now the information the board wishes, the specific information. Of course as I have said to Mr. Moores
261 and others, there is no man, I dare say, living, who could give that information without reference to the records and books. I could not begin to answer such questions with regard to the State of Indiana or the State of Illinois where I live. It is not possible. We have, for instance, in this country, about ten thousand offices, and we occupy I don't know how many railroads, and we have all sorts and varieties of connections with other express companies, which I don't know about, but I know where to look for them, any more than a lawyer would know every case in the books. It is about the same, but I know this, I can speak rather definitely to the fact that in all the ways in which an express company exists as such, that we are conducting in Europe the business the same as we are in this country, with exclusive agencies and fully equipped offices, the same as we have in Indianapolis. We have freight to the seaboard in the same manner, and we are the responsible carrier for it the same as we are here. We do not own the railroad trains here nor the railroad cars nor do we in Europe. We send tons of freight here which is not in charge of our employees and the same in Europe, and we send a great deal in the exclusive charge of
262 our employees here, and the same is true in Europe.

By Capt. HART:

Q. When you transport freight in this country without a route agent or employee, in whose care is it?

A. In the railroad companies' care.

Q. Have you a contract with the railroad companies here by which their employees handle your freight at the different stations?

A. No sir, not at all. It is purely a matter of local arrangement or expediency.

Q. Would you send local freight from here to Louisville without an agent accompanying it?

A. Oh yes, very likely we do frequently; I don't know.

Q. Would you send local freight on the route between Cairo and Cape Town without a local agent?

A. I would think so.

Q. How would you handle it?

A. I would think about the same way as from Cleveland to Detroit, by the Detroit and Cleveland steamers.

Q. It would be handled by an employee of the transportation company?

A. Yes sir. We assume, and we advertise, and we undertake to do exactly the same business in Europe that we do here.

263 By Governor MOUNT:

Q. One thing seems very marvelous to this board and that is that in 1897, you should report 34,000 miles over which you transact business, and that your last report should at once raise your mileage to 160,000 miles.

A. That is true enough, but we did not engage in perfecting our European system until 1897.

Q. Were you not doing business in foreign countries prior to 1897?

A. Not as now.

Q. But you were doing business?

A. We were in one or two spots in a certain way, but in 1897, we undertook to handle the whole thing and give up all our other agents. We handled the business largely through the firm of Meadows & Company, who were the representatives of the New York Central in London. In 1897 we gave them up, and superseded them, and established our own exclusive offices, and rates and service. We did not assume to figure the European mileage as ours previous to the time we established our own business.

264 By Mr. MOORES:

Q. And this change which occurred took in in one year 126,000 miles of additional service?

A. If that is when it was made.

Q. You increased more than four times in one year the territory you covered?

A. Evidently from the figures you have.

Q. And the whole method throughout the world was changed?

A. Our whole system was changed.

Q. What increase in the employees of the company was there between 1897 and 1898?

A. Well, I couldn't tell you.

Q. Were they quadrupled?

A. I couldn't tell you. You see, Mr. Moores, those questions could not possibly be answered by anyone unless they have a book before them.

Q. You don't know whether the companies' employees were increased at all do you?

A. I don't know whether they were increased or not. I would be very much surprised if they were not increased about 3,000.

265 Q. How many employees have you in this country now?

A. I don't suppose any one possibly knows, but I would think about 25,000 employees.

Q. And you have possibly 200 in Europe?

A. I don't know.

Q. You said that under oath awhile ago.

A. About two hundred.

Q. You have about 200 freight agents in Europe, and you are doing business there in the same way as in this country. You must have more efficient men in Europe than in the United States.

A. No, that does not necessarily follow. I don't quite get your point.

Q. If it takes 25,000 men to do your business over a territory of 34,000 miles in this country, how do you manage to have 200 Europeans, or have you sent Americans over there to do the business, how do you manage to have 200 agents cover the immense mileage on that side?

A. We have not got as many offices there as we have here, and we do not do business there between near as many places as here.

Q. But the distances are much more magnificent?

266 A. Evidently. I think there are no local offices between New York and Liverpool. I am not quite sure, but I think there are not.

Q. You have no local offices between Liverpool and New York?

A. Not that I am aware of. There may be, but I am not sure. The salient point about it all, as I get it, is the matter as to whether we do an express business in Europe, and all I can say is that we do to all practical intent and purposes.

By Capt. HART:

Q. You depend on your route agents there as here? You do not depend on the transportation company to deliver your freight?

A. No more than we do here and no less than we do here.

Q. If you depend on your transportation offices to deliver your freight from Cairo to Cape Town, would you include that in your mileage as express business?

A. That I don't know. I am not aware how that mileage is made up; not at all, but if we do an express business here, it is done there.

267 Mr. MOORES: It is a very serious matter to this board to find out how the mileage is made up, and you have furnished the board no information on that subject at all, last year or this year, and when the board asked for the information, you refused to furnish it.

Mr. DANIELS: Mr. Moores, you have no right to say to this witness, or any other that he has or has not done this or that. We are simply standing on our rights, and I don't think you have any right to cross-examine the witness in that way.

Capt. HART: Could not your treasurer, from the pay-roll in New York definitely determine the character of your employees in Europe, and the number?

Mr. FARGO: Oh, yes. Our vice president is most familiar with that.

Capt. HART: And the services they render?

Mr. FARGO: Yes. I suppose we have about two million dollars with which to transact our freight and money business in Europe most of the time.

Mr. MOORES: Won't your traveler's checks *will* run vastly more than that in a month, your European traveler's checks?

Mr. FARGO: I think they might run that in two years.

268 Mr. MOORES: I do not mean at the Chicago office, but the companies' travelers' checks in Europe.

Mr. FARGO: No; you have very exaggerated ideas on that. The foreign exchange business is just beginning. The banks handle most of the credits. We are working it up, but we do no such business as that at all.

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269 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1899, p. 1221.)

Third session.

INDIANAPOLIS,
TUESDAY, *August* 22, 1899—10 o'clock a. m.

The State board of tax commissioners met, pursuant to adjournment, for the purpose of hearing the complaints or applications for change in the assessment made, by the owners of railroad property, and all other persons, partnerships, associations, companies, or corporations whose assessments have been fixed at the first session.

Present: James A. Mount, governor, chairman, Union B. Hunt, secretary of state. W. H. Hart, auditor of State. Thos. B. Buskirk, John C. Wingate, commissioners. Frank Martin, deputy auditor of State, secretary of the board.

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270 The American Express Company.

The National Express Company.

The National Express Company, and the American Express Company respectively, file the following protests against the assessments of said companies as fixed by the board at its first session this year:

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271 To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1899, of the property of this company in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450.00 per mile of the 1798.34 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto.

(2.) Because the statute under which said assessment is
272 made is in contravention of section 22 of article 4 of *of* the constitution of the State of Indiana and of section 1 of article 10 of the constitution of the State of Indiana, and of section 25 of article 1 of the constitution of the State of Indiana:

(3.) Because the method of procedure adopted by your honorable body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14 amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and in its derogation of the rights, privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana:

(4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation:

273 (5.) Because since the first day of January, 1899, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation and property whatever except such as has been in the year 1899, duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body:

(6.) Because the valuation and assessment as made by the local taxing officers in 1899, in the State of Indiana of this company's property in that State from which no appeal has been taken, is in excess of the true cash value of all this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana.

(7.) Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1899, pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not objected
274 to by any officers of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1, 1899, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana:

(8.) Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 163,000 miles (of these about 35,000 miles are in this country and the remainder is made up of water routes, railroad and other routes and lines outside of this country): that by its said report this com-

pany is shown to have on April 1st, 1899, a capital of the face value of $18,000,000 then worth on the market 140 cents on the dollar or $25,200,000 and no more; that by its said report this company is shown to have had on said April 1, 1899, real estate without the State of Indiana not used in its express business which was valued for taxation at $969,800.00 and to have had on said last named date in the State of New York and subject to the jurisdiction of the State of New York for taxation purposes personal property consisting of
275 bonds, stocks, mortgage notes and other like securities of the market value of $16,600,120.95 and that it then had in Indiana 1798.34 miles of lines or routes and that this company's property in the State of Indiana valued and assessed by the local taxing officers in 1899, was assessed for taxation purposes at $16,334; and this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true: and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1899, other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be,—

(*a.*) In excess of $125 per mile even if its said personal property of the value of $16,600,120.95, outside of Indiana and not used in its express business be included in arriving at said value: and:
276 (*b.*) If the value of said personal property outside of Indiana and not used in this company's express business be, as it should be excluded could not be in excess of $30.00 per mile; and

(*c.*) If the mileage other than water and foreign routes be taken as the total mileage and said $16,600,120.95, of value of personal property, outside of Indiana and not used in the company's express business be excluded, as it should be excluded, could not be in excess of $148 per mile.

Wherefore, the American Express Company respectfully ask your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1899, of $450 per mile upon said 1798.34 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $30.00 per mile for said 1798.34 miles of its lines or routes in the State of Indiana; and that this protest be received, filed and considered by your honorable body.

Respectfully submitted,

AMERICAN EXPRESS COMPANY,
By BAKER & DANIELS, *Its Attorneys.*

Indianapolis, Indiana, August 22, 1899.

277 To the honorable the State board of tax commissioners of the State of Indiana:

The National Express Company respectfully protests against the preliminary valuation and assessment by your honorable body at its session — 1899, of the property treated as this company's property in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450 per mile of the 414.70 miles of lines or routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce *cal*use thereof and of section 1 of the 14th amendment thereto.

278 (2.) Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana:

(3.) Because the method of procedure adopted by your honorable body in your said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and is in derogation of the rights, privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respect*fully* by the Constitution of the United States and the constitution of the State of Indiana:

(4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of

279 Indiana for purposes of taxation:

(5.) Because since the 1st of January, 1899, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1899 duly assessed by the local assessing officers for taxation for that year, and from which assessment no appeal has been taken to your honorable body, all of which property so assessed is really owned by the American Express Company and is in this company's possession only as its agent:

(6.) Because the valuation and assessment as made by the local taxing officers in 1899, in the State of Indiana of this company's property in that State so possessed by it as the agent of the American Express Company, from which no appeal has been taken, is the true cash value of all this company's property in this State in said year as well that required to be assessed by such local officers as

that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana in view of the fact as shown by its report filed with the auditor of state of the
280 State of Indiana in the year 1899, that all of its lines and routes in Indiana are operated by it exclusively and only for the benefit of the American Express Company of which it is agent:

(7.) Because under the showing made by this company in its said verified report made pursuant to the statutes in that behalf which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1st, 1899, and is not now any property of this company in the State of Indiana or elsewhere subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana:

(8.) Because as was shown and is shown by this company's said report above mentioned it has a total mileage of lines or routes of — miles, that by its said report this company is shown to have paid on April 1st, 1899, a capital of the face value of $500,000, then worth on the market 100 cents on the dollar or $500,000 and
281 no more: and this company *how* shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true: and *there* this company submits that under the direction of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1899, other than said tangible property which was so valued and assessed by the local taxing officers in Indiana *count* not be in excess of $110.00 per mile.

Wherefore, the National Express Company respectfully asks your honorable board to set aside its said preliminary assessment against this company in Indiana for 1899, of $450 per mile upon said 414.70 miles of lines or routes and to make no assessment thereof: or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $110.00 per mile for said 414.70 miles of lines or routes in the State of Indiana: and that this protest be received, filed and considered by your honorable
282 body.

Respectfully submitted.

NATIONAL EXPRESS COMPANY,
By BAKER & DANIELS.

Indianapolis, Indiana, August 22, 1899.

283 COMPLAINANT'S EXHIBIT No. 10.

Transcript from the Proceedings of the Indiana State Board of Tax Commissioners for the Year 1900. Rowland Evans, Special Examiner.

284 (From the Proceedings of the Indiana State Board of Tax Commissioners for the Year 1900, at page 687.)

INDIANAPOLIS,
FRIDAY, *August* 17, 1900—10 o'clock a. m.

The State board of tax commissioners met, pursuant to adjournment.

Present: James A. Mount, governor, chairman. Union B. Hunt, secretary of state. W. H. Hart, auditor of State. Thos. B. Buskirk, John C. Wingate, commissioners. Frank Martin, deputy auditor of State, secretary of the board.

* * * * * * *

285 American Express Company.

National Express Company.

Albert Baker, counsel for the American Express Company and the National Express Company, appears before the board and makes the following statement with reference to a modification of the assessment of said companies, as fixed by the board at its first session, this year:

Mr. BAKER: The condition of these companies and their situation are exactly as last year. There is no new condition of fact, and there is no new condition of law. This board and our client are engaged in a lawsuit. That lawsuit is still undetermined. An answer has been filed, and the case has been put at issue within the last few weeks. Since the board met last, the demurrer to our appeal has been overruled, and Judge Woods granted us a restraining order on the ground that the appeal stated a cause of action, and we are about to take testimony. We have taken one view of the law, and the board another, and until the case is decided it is our duty to present our protest. Our showing this year by our report
286 is substantially the same as last year. The item over which the greatest contention arises is the foreign property not used in the express business. That has slightly increased in value. Last year, as I recollect it, it was about $16,000,000 in value and this year it is a little over $18,000,000, out of a gross valuation of $25,200,000. This property is not used in the express business any more than my house is used in my law business. Possibly my note as a lawyer is a little better because I own my house, but I am no better lawyer because I own my house. The theory of this

board as I understand it is that because these companies have invested their capital in bonds and stocks, and mortgage loans, and office buildings rented to other persons, just as any other investor would have his money placed out at interest or producing rent, that, therefore, it is a better express company; it is a more solvent express company, and hence, that money is used in the express business. I simply want to say as to the American Express Company that the facts are just as they were last year, with the exception, as I say, of the value of this foreign-held property not used in express business, which has increased from $16,000,000 to $18,640,461.13, as shown by the report. We wish to file a formal protest, exactly as we
287 did last year, showing that we think that valuation should be excluded from any figures you consider. We also contend, in our protest, that the whole mileage of this company, wherever situate, whether foreign or domestic, should be considered, as the statute under which you act does not limit you, or inferentially limit you, to the United States mileage. Both of those theories are advanced in this protest.

Judge BUSKIRK: How did it come to take these express companies so long to find out their extensive mileage?

Mr. BAKER: I don't think that is a fair question, but in this particular case, at the time this act was passed, we did not operate foreign lines, and the first year this company began to operate foreign lines a change was made in the report. In 1896 the American Express Company, unlike any other express company, began conducting foreign lines. No other company operates foreign connections, but the American Express Company has foreign offices.

288 Capt. HART: In this long-distance mileage, from here to Cape Town, in Africa, for instance, do you pursue the same details as to messengers that you do in this country?

Mr. BAKER: I could not answer that question. I don't know.

Capt. HART: Or is that express matter sent to an agent and distributed at those far off places?

Mr. BAKER: It may be sent to our agent. I can not answer your question. I understand that last year and the year before, and I understand again this year, that the American Express Company officers claim, and claim under oath, that a change was made in their business by which they operate foreign lines. I don't know the details as to how they operate these foreign lines, but I know they have foreign offices.

Capt. HART: Don't you think, in order to make your contention good, for this long distance mileage and to these remote places, that you would have to show that you have the same machinery that you have here?

Mr. BAKER: I don't think so. The statute does not say that the express companies have to have a messenger travelling with their goods. The statutes speaks of companies carrying property for people over railroads it does not own.

289 Capt. HART: As a matter of fact, isn't that what makes an express company—that they have a messenger?

Mr. BAKER: I don't think it is. It is just as much express business to seal a package here and send it to New York by freight, and pay the railroad company for carrying and delivering it to our agent in New York, as to have the agent go in the car. I think they are both express. There are different kinds of express.

Capt. HART: If you should send a package from New York to Hamburg, and do not send a messenger along you think that is carrying out what is generally understood as express business?

Mr. BAKER: If it is delivered to our express agent at Hamburg for delivery to the consignee, I think it is express. I think we become responsible, as an express company, for the transfer of the package every minute from here until the time the consignee gets it into his hands in Hamburg. However, my principal contention is not over this foreign mileage. I imagine if we could settle the foreign-held property that we could compromise the foreign mileage question on a basis satisfactory to this board. The National Company is the same as last year. Our contention is that the
290 National Company does no business in Indiana on its own account. It merely takes some contracts for the American Express Company, as its agent, and all the profits that accrue from that business are turned over to the American Express Company, and all losses that result are paid by the American Express Company. All the argument I make on the American Express mileage applies to the other as well.

I file the following protests:

291 To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1900, of the property of this company in the State of Indiana other than its tangible property, which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450 per mile of the 1830.35 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States, and especially of the interstate commerce clause thereof, and of section 1 of the 14th amendment thereto.

(2.) Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution
292 of the State of Indiana, and of section 1 of article 10 of the constitution of the State of Indiana, and of section 23 of article 1 of the constitution of the State of Indiana.

(3.) Because the method of procedure adopted by your honorable body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the interstate commerce clause thereof, and of section 1 of the

14th amendment thereto, and is in contravention of section 22 of article 4, and of section 1 of article 10, and of section 23 of article 1, of the constitution of the State of Indiana, and is in derogation of the rights, privileges and immunities of this company, and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana.

(4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation.

293 (5.) Because since the 1st of January, 1900, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1900, duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body:

(6.) Because the valuation and assessment as made by the local taxing officers in ——, in the State of Indiana, of this company's property in that State from which no appeal has been taken, is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana.

(7.) Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1900, pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not

294 objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there waas not on April 1st, 1900, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana:

(8.) Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 162,619-17/100 miles (of these 35,000 miles are in this country and the remainder is made up of water routes, railroad and other routes and lines outside of this country): that by its said report this company is shown to have had on April 1st, 1900, a capital of the face value of $18,000,000 then worth on the market 140 cents on the dollar or $25,200,000 and no more; that by its said report this company is shown to have had on April 1st, 1900, real estate without the State of Indiana and not used in its express business which was valued for taxation ar $1,129,200 and to have had on said last named date in the State of New York and subject to the jurisdiction of

295 the State of New York for taxation purposes personal property consisting of bonds, stocks, mortgage notes and other like

securities of the market value of not less than $18,640,461.13 and that it then had in Indiana 1830-35/100 miles of lines or routes and that this company's property in the State of Indiana valued and assessed by the local taxing officers in 1900, was assessed for taxation purposes at $17,256; and this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1900 other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be

(*a.*) In excess of $135 per mile even if its said personal property of the value of $18,640,461.13, outside of Indiana and not used in express business be included in arriving at said value: and

(*b.*) If the value of said personal property outside of
296 Indiana and not used in this company's express business be, as it should be excluded, could not be in excess of $30.00 per mile; and

(*c.*) If the mileage other than water and foreign routes be taken as the total mileage and said $18,640,461.13 of value of personal property, outside of Indiana and not used in this company's express business be excluded, as it should be excluded, could not be in excess of $155.00 per mile.

Wherefore, the American Express Company respectfully asks your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1900, of $450.00 per mile upon said 1830-35/100 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $30.00 per mile for said 1830-35/100 miles of its lines or routes in the State of Indiana and that this protest be received filed and considered by your honorable body.

Respectfully submitted,

AMERICAN EXPRESS COMPANY,
By BAKER & DANIELS, *Its Att'ys.*

Indianapolis, Ind., Aug. 17, 1900.

297 To the honorable the State board of tax commissioners of the State of Indiana:

The National Express Company respectfully protests against the preliminary valuation and assessment by your honorable body at its session in 1900, of the property treated as this company's property in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450.00 per mile of the 414-70/100 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto:

(2.) Because the statute under which said assessment is
298 made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana:

(3.) Because the method of procedure adopted by your honorable body in your said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4, and of section 1 of article 10, and of section 23 of article 1 of the constitution of the State of Indiana, and is in derogation of the rights, privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana:

(4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation:

299 (5.) Because since the first day of January, 1900, continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1900 duly assessed by the local assessing officers for taxation for that year, and from which assessments no appeal has been taken to your honorable body, all of which property so assessed is really owned by the American Express Company and is in this company's possession only as its agent:

(6.) Because the valuation and assessment as made by the local taxing officers in 1900, in the State of Indiana of this company's property in that State so possessed by it as the agent of the American Express Company, from which no appeal has been taken, is the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana in view of the fact as shown by its report filed with the auditor of state of the State of Indiana in the year 1900, that all of its routes and lines in Indiana are operated by it exclusively and only for the benefit of the American Express Company of which it is agent:

300 (7.) Because under the showing made by this company in its said verified report made pursuant to the statutes in that behalf which was duly accepted by the proper officers of the State

of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and w-ich was and is in fact true, it appears that there was not on April 1st, 1900, and is not now any property of this company in the State of Indiana or elsewhere subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana:

(8.) Because as was shown and is shown by this company's said report above mentioned it has a total mileage of lines or routes of 414-70/100 miles, that by its said report this company is shown to have had on April 1st, 1900, a capital of the face value of $500,000.00 then worth on the market 100 cents on the dollar or $500,000.00 and no more; and this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact true; and therefore this company submits that
301 under the direction of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1900, other than said tangible property which was so valued and assessed by the local taxing officers in Indiana could not be in excess of $110.00 per mile.

Wherefore the National Express Company respectfully asks your honorable board to set aside its said preliminary assessment against this company in Indiana for 1900, of $450.00 per mile upon said 414-70/100 miles of lines or routes and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $110.00 per mile for said 414.70 miles of lines or routes in the State of Indiana; and that this protest be received, filed and considered by your honorable body.

Respectfully submitted.

NATIONAL EXPRESS COMPANY,
By BAKER & DANIELS, *Its Att'ys.*

Indianapolis, Ind., Aug. 17, 1900.

302 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1900, p. 761.)

INDIANAPOLIS,
WEDNESDAY, *Aug.* 22, 1900—10 o'clock a. m.

The State board of tax commissioners met, pursuant to adjournment.

Present: James A. Mount, governor, chairman. Union B. Hunt, secretary of state. W. H. Hart, auditor of State. Thos. B. Buskirk, John C. Wingate, commissioners. Frank Martin, deputy auditor of State, secretary of the board.

* * * * * * *

Southern Express Company.

The following communication is received and ordered made a part of the record.

303 CHATTANOOGA, TENN., *Aug.* 18, 1900.

To the auditor of the State of Indiana, Indianapolis, Ind.

DEAR SIR: In reading an Indiana paper I came across the paragraph marked herein. I am not sure that — understand these figures, but I presume the Southern Express Company is put down at 10 miles at a valuation of $150 per mile, whilst the Pacific is only valued at $65 per mile, and the Wells, Fargo & Company at $100.

I have no reason to doubt the accuracy of the Pacific and Wells, Fargo assessment, but I have to submit that the Southern Express Company's mileage in Indiana is perhaps the least valuable of any express mileage in the State.

In the first place, we do not do any intra-state business. We merely have the right of a terminus at Evansville, for the transportation of business to and from the South, as we run along with the Adams Express from Henderson to Evansville on the same tracks and the same trains.

I think the Southern Express Company's mileage should be valued as low as that of any other express mileage in the State.

Respectfully, CHAS. L. LOOP,
Traffic Manager.

* * * * * * *

304 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1900, p. 773.)

INDIANAPOLIS,
THURSDAY, *Aug.* 23, 1900—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: James A. Mount, governor, chairman. Union B. Hunt, secretary of state. W. H. Hart, auditor of State. Thos. B. Buskirk, John C. Wingate, commissioners. Frank Martin, deputy auditor of State, secretary of the board.

The following orders were made by the board:

* * * * * * *

(American Express Co.)

(National Express Co.)

305 In the matter of the petitions of the American Express Company and the National Express Company for a modification of the assessments of said companies as fixed by the board during the first twenty days of its present session, the board having considered the same, it is,

Ordered, that the prayer of the petitions be denied and that the assessment of said companies be and remain the same as fixed by the board during the first twenty days of its present session.

* * * * * * *

306 (From the Proceedings of the Indiana State Board of Tax Commissioners for 1900, p. 775.)

INDIANAPOLIS,
THURSDAY, *Aug.* 23, 1900—10 o'clock a. m.

The State board of tax commissioners met pursuant to adjournment.

Present: James A. Mount, governor, chairman. Union B. Hunt, secretary of state. W. H. Hart, auditor of State. Thos. B. Buskirk, John C. Wingate, commissioners. Frank Martin, deputy auditor of State, secretary of the board.

The following orders were made by the board:

* * * * * * *

(Southern Express Company.)

307 In the matter of the petition of the Southern Express Company for a modification of its assessment as fixed by the board during the first twenty days of its present session, it is,

Ordered, that the prayer of the petition be not granted.

308 Express companies.

1898.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests, 180,000. of $100 each	$18,000,000
Item 2. No. of interests issued and outstanding 180,000 interests.	
a. Par or face value of each interest, all interests are of equal value	$100.00
Item 3. Principal place of business New York, in the State of New York.	
Item 4. Market value of interests on the 1st day of April, 1898	$120.00
a. If shares have no market value then state actual value thereof	$—

309 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation *within the State of Indiana*, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	* Description of real estate, structure, machinery, etc.	Assessed value.
Boone	Personal property	$40
Clinton	" "	340
Dearborn	" "	75
Decatur	" "	175
Delaware	" "	400
Floyd	" "	300
Fountain	" "	45
Grant	" "	330
Henry	" "	60
Jasper	" "	25
Lake	" "	125
Laporte	" "	150
Lawrence	" "	220
Madison	" "	500
Marion	" and real estate	10100
Monroe	" "	150
Orange	" "	95
Pulaski	" "	55
Putnam	" "	300
Randolph	" "	160
Rush	" "	75
St. Joseph	" "	300
Shelby	" "	160
Tippecanoe	" "	475
Vigo	" "	800
Wabash	" "	210
Washington	" "	25
White	" "	35
Montgomery	" "	290
		$16015

* Township.

The above personal property consists of horses, wagons, harnesses, safes, &c.

The following property, of the like description, is in use by the National Express Company, and is assessed to it for local taxation, but actually belongs to this company, being used by the National Express Company as agent of this company.

Allen	Horses, wagons, office fixtures, scales, safes...	610
Elkhart	" " " " " " ...	75
Howard	" " " " " " ...	110
Wells	" " " " " " ...	110
		16920

310 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.
55 & 61 Hudson St., building.	New York, N. Y..	Rented.....	240000
157 Hudson St. building.	" " ..	"	13000
365 Broadway building.	" " ..	"	375000
Corner Broome & Elm Sts. building.	" " ..	"	80000
172 St. John's Place building.	" " ..	"	9000
Cor. Main & Erie Sts. building.	Buffalo, " ..	"	98020
Exchange St. building.	" " ..	"	16800
Canal & Friend Sts. building.	Boston, Mass.....	Undergoing repairs for rental purposes.	154000
Larned, First & Cass Sts. building.	Detroit, Mich	Rented.....	10000
Marshall St. building...	Paterson, N. J....	"	1400
			997220

The foregoing real estate is of the market value of $1,983,534.30

American Express Company.

Itemized Statement of Mileage in the State of Indiana.

City, corp'n, or township.	Mileage.	
Allen county.		
Adams, twp.	6.03	
Jackson, twp.	4.23	
Jefferson, twp.	6.05	
Wayne, twp.	.89	
		17.20
Bartholomew county.		
Columbus, twp.	3.30	
Clay, twp.	1.16	
Flat Rock, twp.	2.57	
Hamcreek, twp.	6.58	
Columbus, city	1.69	
		15.30
Benton county.		
Bolivar, twp	.71	
Center, twp.	13.30	
Oak Grove, twp.	9.64	
Richland, twp	2.24	
Union, twp.	6.01	
York, twp	4.34	
Earl Pare, corp.	2.68	
Fowler, corp.	1.47	
Oxford, twp.	.48	
		40.87
Boone county.		
Center, twp.	7.76	
Eagle, twp.	5.17	
Jefferson, twp.	1.60	
Jackson, twp.	4.23	
Sugar Creek, twp.	6.56	
Worth, twp	4.52	
Washington, twp.	1.14	
Jamestown, corp.	.42	
Lebanon, corp.	1.19	
Thorntown, corp.	.63	
Zionsville, corp.	.69	
Marion, city	5.35	
		38.76
Carroll county.		
Clay, twp.	3.86	
Deer Creek, twp.	5.74	
Delphi, city	1.43	
Jefferson, twp.	6.07	
Madison, twp.	3.48	
Tippecanoe, twp.	4.17	
		24.75
Clark county.		
Carr, twp.	5.96	
Wood, twp.	5.84	
Silver Creek, twp.	.99	
		12.79
Clay county.		
Brazil, twp.	2.06	
Dick Johnson, twp.	8.50	
Van Buren, twp.	4.03	
Brazil, city	.64	
Carbon, corp.	.69	
		15.92
Clinton county.		
Center, twp.	2.19	
Jackson, twp	4.07	
Kirkland, twp.	6.52	
Owen, twp.	1.15	
Perry, twp	3.14	
Frankfort, city	1.37	
Union, city	4.31	
Rose, twp.	4.05	
Colfax, corp.	.73	
Kirklin, corp.	.52	
Rossville, corp.	.90	
		28.65

City, corp'n, or township.	Mileage.	
Dearborn county.		
Harrison, twp.	5.27	
Jackson, twp	3.92	
Lawrenceburg, twp.	4.26	
Miller, twp.	3.07	
Manchester, twp.	.64	
York, twp.	7.68	
W. Harrison, corp.	.98	
		25.82
Delaware county.		
Center, twp.	3.77	
Liberty, twp.	5.97	
Mt. Pleasant, twp.	4.77	
Muncie, corp.	2.29	
Salem, twp.	3.74	
		20.54
312 **Decatur county.**		
Clay, twp.	9.60	
Adams, twp.	5.01	
Clinton, tw	5.18	
Newpoint, corp.	.55	
Salt Creek, twp.	4.35	
Sand Creek	8.47	
Washington, twp.	19.20	
Westport, twp.	1.09	
Greensburg, city.	1.29	
		54.74
Elkhart county.		
Cleveland, twp.	3.25	
Concord, twp.	6.29	
Elkhart, twp.	5.58	
Jackson, twp.	6.13	
Osceola, twp.	.74	
Elkhart, city	2.61	
Goshen, twp.	2.04	
		26.64
Fayette county.		
Connersville, twp.	3.00	
Columbia, twp.	5.96	
Harrison, twp.	4.03	
Connersville, city	1.17	
		14.16
Floyd county.		
New Albany	6.65	
New Albany, city	2.37	
		9.02
Fountain county.		
Cain, twp.	6.63	
Van Buren, twp.	11.31	
Troy, twp.	4.18	
Logan, twp.	1.49	
Shawnee, twp.	5.20	
Mill Creek, twp.	8.55	
Attica, city	1.26	
Veedersburg, corp.	1.50	
Covington, corp.	1.50	
		41.42
Franklin county.		
Ray, twp.	3.52	
Laurel, twp.	5.18	
Metamora, twp.	5.07	
Brookville, twp.	10.33	
Highland, twp.	1.69	
White Water, twp.	4.53	
Laurel, corp.	.39	
Brookville, corp.	.70	
		31.32

City, corp'n, or township.	Mileage.	
Grant county.		
Washington, twp.	2.82	
Pleasant, twp.	2.93	
Center, twp.	2.07	
Mill, twp.	3.70	
Fairmount, twp.	3.59	
Fairmount, corp.	1.54	
Jonesboro, corp.	.45	
Marion, city	2.85	
		19.94
Green county.		
Jackson, twp.	8.10	
Taylor, twp.	4.25	
Richland, twp.	6.00	
Fairplay, twp.	5.65	
Bloomfield, city	1.40	
		25.40
Hamilton county.		
Clay, twp.	4.50	
Carmel, twp.	.75	
Washington, twp.	6.58	
Westfield, twp.	.92	
Adams, twp.	3.44	
Sheridan, twp.	.75	
		16.94
Hancock county.		
Vernon, twp.	6.38	
Brown, twp.	10.21	
Jackson, twp.	1.17	
Center, twp.	7.15	
Buck Creek, twp.	6.11	
Fortville, twp.	.61	
		31.63
Hendricks county.		
Washington, twp.	7.47	
Lincoln, twp.	10.88	
Middle, twp.	7.36	
Union, twp.	8.39	
Eel River, twp.	8.27	
Center, twp.	5.90	
Marion, twp.	2.71	
Clay, twp.	3.72	
Browns, twp.	.53	
Brownsburg, corp.	1.06	
Danville, corp.	.63	
		56.95
313 **Henry county.**		
Blue River, twp.	5.58	
Prairie, twp.	2.45	
Henry, twp.	6.40	
Greensburg, twp.	8.40	
Wayne, twp.	5.81	
Knightstown, corp.	.82	
Mooreland, corp.	.32	
New Castle, city	.01	
		29.88
Jasper county.		
Kankakee, twp.	3.80	
Wheatfield, twp.	2.78	
Walker, twp.	4.78	
Keener, twp.	.92	
Union, twp.	14.46	
Hanging Grove, twp.	3.12	
Mariol, twp.	8.57	
Rensselaer, twp.	1.17	
Newton, twp.	2.99	
		41.49
Jennings county.		
Center, twp.	2.60	
Sand Creek, twp.	5.62	
No. Vernon, twp.	.59	
		8.81
Johnson county.		
Franklin, twp.	3.87	
Needham, twp.	5.74	
Clark, twp.	.42	
Hensley, twp.	7.05	
Nineveh, twp.	1.34	
Franklin, city	1.55	
		19.97

City, corp'n, or township.	Mileage.	
Knox county.		
Vincennes	.26	
Vincennes, twp.	6.59	
		6.85
Kosciusko county.		
Van Buren, twp.	5.67	
Plain, twp.	5.46	
Wayne, twp.	5.51	
Clay, twp.	4.62	
Lake, twp.	4.80	
Milford, corp.	.32	
Leesburg, corp.	.50	
Claypool, corp.	.39	
Silver Lake, corp.	.21	
Warsaw, city	.90	
		28.38
Lake county.		
Hobart, twp.	9.32	
Calumet, twp.	11.81	
North, twp.	7.68	
St. Johns, twp.	12.97	
Cedar Creek, twp.	11.15	
Lowell, twp.	.55	
Wt. Creek, twp.	.97	
Hanover, twp.	6.02	
Hammond, city.	4.98	
		65.45
Laporte county.		
Dewey, twp.	15.14	
Case, twp.	8.53	
Clinton, twp.	5.82	
New Durham, twp.	5.58	
Westville, twp.	.50	
Coal Springs, twp.	6.75	
Springville, twp.	5.90	
Center, twp.	4.64	
Scipio, twp.	5.94	
Noble, twp.	5.94	
Hanna, twp.	4.82	
Springfield, twp.	1.03	
Michigan, twp.	3.96	
Michigan, city	5.49	
La Porte, twp.	1.31	
		81.35
Lawrence county.		
Marion, twp.	8.29	
Shawswick, twp.	11.38	
Marshall, twp.	9.87	
Indian Creek, twp.	.50	
Perry, twp.	7.83	
Bedford, city	2.11	
Mitchell, corp.	1.07	
		41.05
Madison county.		
Union, twp.	3.65	
Anderson, twp.	9.50	
Fall Creek, twp.	6.26	
Green, twp.	1.85	
Van Buren, twp.	4.16	
Monroe, twp.	5.43	
Lafayette, twp.	5.83	
Adams, twp.	7.72	
Ingalls, corp.	.80	
Pendleton, corp.	.43	
Summitville, corp.	.51	
Alexandria, corp.	1.34	
Anderson, corp.	1.67	
Anderson, city	2.87	
		52.02
314 **Marion county.**		
Center, twp.	4.77	
Washington, twp.	8.60	
No. Indianapolis, twp.	.75	
Hughville, twp.	1.30	
Wayne, twp.	18.96	
Warren, twp.	9.46	
Franklin, twp.	8.49	
Pine, twp.	6.27	
Lawrence, twp.	7.54	
Indianapolis, city	21.24	
		87.38

City, corp'n, or township.	Mileage.	
Monroe county.		
Clear Creek, twp	6.56	
Perry, twp	6.54	
Bloomington, twp	1.60	
Richland, twp	6.28	
Bean Blossom, twp	6.81	
Bloomington, city	1.43	
		29.22
Montgomery county.		
Clark, twp	3.81	
Ladoga, twp	.87	
Scott, twp	1.72	
Union, twp	20.78	
Madison, twp	6.07	
Walnut, twp	6.33	
Wayne, twp	6.37	
Crawfordsville, city	2.80	
New Ross, corp	.51	
Waynetown, corp	.57	
		49.83
Morgan county.		
Jackson, twp	6.17	
Washington, twp	5.80	
Martinsville, corp	.58	
		12.55
Newton county.		
Jefferson, twp	1.43	
Lincoln, twp	6.72	
McClellan, twp	2.49	
Beaver, twp	6.49	
Washington, twp	2.86	
Iroquois, twp	10.83	
Grant, twp	7.19	
Morocco, twp	.92	
Brook, twp	.35	
Goodland, twp	1.01	
Colfax, twp	3.82	
Jackson, twp	6.02	
		50.30
Orange county.		
No. East, twp	4.06	
Orleans, twp	8.09	
Paoli, twp	6.75	
French Lick, twp	6.20	
Orleans, twp	.87	
Paoli, corp	1.35	
		27.20
Owen county.		
Wayne, twp	5.09	
Harrison, twp	3.72	
Taylor, twp	2.12	
Gosport, corp	.35	
		11.19
Parke county.		
Florida, twp	10.45	
Jackson, twp	1.07	
Green, twp	5.96	
Washington, twp	6.43	
Penn, twp	3.41	
Reserve, twp	10.65	
Wabash, twp	6.80	
Liberty, twp	6.81	
Rosedale, corp	.61	
		52.19
Porter county.		
Pleasant, twp	3.22	
Pine, twp	4.76	
Portage, twp	4.19	
W't Chester, twp	8.09	
		20.26
Posey county.		
Bethel, twp	5.91	
Robert, twp	10.35	
Smith, twp	4.38	
Harmony, twp	3.45	
Poseyville, corp	.38	
New Harmony, corp	.36	
		24.83
Pulaski county.		
Salem, twp	5.42	
White Post, twp	5.99	
Cass, twp	6.04	
Francisville, corp	.50	
		17.95

City, corp'n, or township.	Mileage.	
315 **Putnam county.**		
Jackson, twp	5.62	
Franklin, twp	11.42	
Russell, twp	6.01	
Floyd, twp	2.17	
Marion, twp	4.00	
Greencastle, twp	13.89	
Madison, twp	6.43	
Cloverdale, twp	5.44	
Warren, twp	6.54	
Monroe, twp	6.10	
Cloverdale, corp	.40	
Bainbridge, corp	.18	
Roachdale, corp	.29	
Greencastle, city	.44	
		68.93
Randolph county.		
Wayne, twp	4.06	
White River, twp	9.19	
Monroe, twp	5.46	
Greensburg, twp	6.91	
Washington, twp	5.12	
West River, twp	5.54	
Farmland, corp	.28	
Parker, city	.82	
Winchester, corp	1.01	
Union City, corp	1.04	
Lynn, corp	.76	
Bronson, corp	.27	
Nettle Creek, twp	5.05	
		45.51
Ripley county.		
Adams, twp	8.18	
Laughrey, twp	.58	
Batesville, corp	1.00	
		9.76
Rush county.		
Ripley, twp	5.65	
Posey, twp	1.84	
Jackson, twp	2.80	
Rushville, twp	7.16	
Anderson, twp	6.07	
Carthage, corp	1.40	
Rushville, city	.63	
		25.55
Shelby county.		
Noble, twp	1.08	
Liberty, twp	4.05	
Shelby, twp	2.26	
Addison, twp	5.16	
Brandywine, twp	5.18	
Sugar Creek, twp	6.53	
Moral, twp	3.76	
Shelbyville, corp	.60	
		28.48
Starke county.		
Railroad, twp	5.73	
		5.73
St. Joseph county.		
Harris, twp	4.18	
Clay, twp	4.59	
So. Bend, city	1.47	
		10.24
Tippecanoe county.		
Lauramie, twp	6.63	
Sheffield, twp	2.79	
Wea, twp	7.42	
Fairfield, twp	5.00	
Randolph, twp	5.90	
Union, twp	5.41	
Tippecanoe, twp	5.86	
Battle Ground, twp	.77	
Clark's Hill, corp	.65	
Lafayette, city	4.29	
		44.72

City, corp'n, or township.	Mileage.	
Vanderburg county.		
Armstrong, twp.	4.07	
Germantown, twp.	4.97	
Center, twp.	1.93	
Pigeon, twp.	.78	
Evansville, city	1.14	
		12.89
Vermilion county.		
Holt, twp	18.13	
Highland, twp.	11.06	
Eugene, twp.	6.09	
Vermilion, twp.	6.73	
Clinton, twp	2.06	
Cayuga, corp	.98	
Newport, city	.24	
Clinton, city	.68	
		45.97
Vigo county.		
Nevins, twp	10.94	
Otter Creek, twp.	8.12	
Harrison, twp.	3.62	
Sugar Creek, twp.	4.91	
Fayette, twp.	2.92	
Terre Haute, city	1.33	
		31.84
Wabash county.		
Pleasant, twp.	3.17	
Chester, twp.	7.04	
Lagro, twp.	5.34	
Noble, twp.	5.04	
Waltz, twp.	.35	
Liberty, twp.	7.09	
No. Manchester, corp.	.58	
Wabash, city	2.76	
		31.37

City, corp'n, or township.	Mileage.	
Warren county.		
Pike, twp	2.06	
Steuben, twp.	4.08	
Jordan, twp.	2.08	
Adams, twp.	6.02	
Warren, twp	6.73	
Washington, twp.	.41	
Mound, twp.	4.97	
		26.35
Washington county.		
Polk, twp.	3.10	
Pierce, twp	3.58	
Washington, twp	13.34	
Vernon, twp.	2.65	
Brown, twp.	1.61	
Saltillo, twp.	1.28	
Salem, corp.	.96	
Campbellsburg, corp.	1.14	
		27.66
Wayne county.		
Jefferson, twp	2.12	
Jackson, twp	4.88	
Washington, twp	5.79	
Milton, corp.	.50	
Hagerstown, corp.	.18	
Cambridge, city	.86	
		14.33
White county.		
Prairie, twp	5.63	
Big Creek, twp.	6.06	
Honey Creek, twp.	7.51	
Monon, twp.	14.37	
Union	4.41	
Brookston, corp.	.50	
Reynolds, corp.	.71	
Monon, corp.	1.21	
Monticello, corp.	1.58	
		42.01

317 Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned by the company on the first day of April, 1898, and which is not and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to uses having no relation whatever to the express business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April, 1898 was not less than $1,983,534.30.

On the first day of April, 1898, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept, by the company, so long as it had owned the same, in the city of New York where its principal office is situated. No part of said invest-
318 ments was used by the company on the first day of April, 1898, or during the year then ending, in its express business,

and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral, which were on the first day of April, 1898, of the market value of $16,501,344.33.

All of said stocks, bonds, mortgages, and other personal securities, or evidence of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for the inspection by any authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first of April, 1898, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts and other States, and was, on that day, of the market value of not less than $3,076,438.

That all of the real estate hereinbefore mentioned is subject
319 to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1898, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c. of the value of $1,505,738.72. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which the same were situated. That of said amount of $1,505,738.72 less than $8,000. in value was situated in the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1898, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value exceeding the market value of the entire aggregate interests of the associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said company and situated outside of said State.

320 This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of the Adams Express Company against the Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of the Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of the American Express Company against Indiana (165 U. S. 255).

321 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.
None.		

≠ Including 4565 miles over which National Express Company so transports merely as agent of and for account of this company.
o Including 414.70 miles over which National Express Company so transports merely as agent of and for account of this company.

Item 8. *a.* Total length of its lines or routes over which it transports merchandise, freight or express matter≠..... 163,063 miles.
b. Total length of such lines or routes as are *outside* of the State of Indiana o..... 160,849.96 miles.

c. Total length of its lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.	Counties. *	Miles.	Hdths.
Allen	17	20	Greene.....	25	40
Bartholomew	15	30	Hamilton	16	94
Benton	40	87	Hancock.....	31	63
Boone.....	38	76	Hendricks.....	56	95
Carroll	24	75	Henry.....	29	88
Clark..	12	79	Jasper..... ..	41	49
Clay	15	92	Jennings.....	8	81
Clinton	28	65	Johnson.....	19	97
Dearborn	25	82	Knox.....	6	85
Decatur	54	74	Kosciusko.....	28	38
Delaware	20	54	Lake	65	45
Elkhart	26	64	Laporte.....	81	35
Fayette....	14	16	Lawrence	41	05
Floyd	9	02	Madison	52	02
Fountain	41	42	Marion	87	38
Franklin	31	32	Monroe	29	22
Grant	19	94		49	83

Counties. *	Miles.	Hdths.
	12	55
	50	30
Orange	27	29
Owen	11	19
Parke	52	19
Porter	20	26
Posey	24	83
Pulaski	17	95
Putnam	68	93
Randolph	45	51
Ripley	9	76
Rush	25	55
Shelby	28	48
Starke	5	73
St. Joseph	10	24
Tippecanoe	44	72
Vanderburg	12	89
Vermilion	45	97
Vigo	31	84
Wabash	31	37
Warren	26	35
Washington	27	66
Wayne	14	33
White	42	01
Carried forward..	1798	34

Counties. *	Miles.	Hdths.
Brought forward.	1798	34
And the following lines or routes over which the National Express Company so transports merely as agent of and for account of this company.		
Adams	16	76
Allen	28	21
Clinton	23	26
Elkhart	5	34
Fountain	25	12
Grant	25	69
Huntington	8	10
Howard	26	74
Kosciusko	20	30
Lake	34	56
Laporte	36	17
Marshall	22	53
Montgomery	15	90
Parke		38
Porter	32	25
St. Joseph	30	72
Starke	15	04
Tippecanoe	6	65
Vermilion	6	85
Wells	15	75
Whitley	18	38
	414	70
Total	2213	04

* Townships.

STATE OF OHIO, }
County of Cuyahoga, } ss:

R. D. Hughes gen'l * superintendent of the American Express Company, being duly sworn on oath says that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

R. D. HUGHES,
Gen'l Superintendent.
—— —— *Secretary.*

Subscribed and sworn to before me, this 3rd day of June, 1898.
[SEAL.]
H. H. INKLEY,
Notary Public in & for Cuyahoga Co.

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*This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of American Express Co. April 1, 1—— Filed June 4, 1898 A. C. Daily, auditor of State.

322 Express companies.

1899.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests 180,000. of $100. each	$18,000,000.
Item 2. No. of interests issued and outstanding 180,000 interests.	
a. Par or face value of each interest, all interests are of equal value	$100.
Item 3. Principal place of business New York, in the State of New York.	
Item 4. Market value of each interest on the 1st day of April, 1899	$140.
a. If shares have no market value then state actual value thereof	$—

This company is not a corporation, but a partnership or joint stock association organized under articles of agreement between its members. It possesses no rights, privileges or franchises other than such as are enjoyed by any private individual or association of individuals.

323 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation *within the State of Indiana*, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	* Description of real estate, structure, machinery, etc.	Assessed value.
Boone	Personal property	20
Bartholomew	" "	75
Clinton	" "	250
Decatur	" "	150
Delaware	" "	460
Elkhart	" "	245
Floyd	" "	340
Fountain	" "	45
Grant	" "	329
Henry	" "	50
Jasper	" "	30
Lake	" "	300
Laporte	" "	180
Lawrence	" "	200
Montgomery	" "	270
Madison	" "	495
Marion	" and real estate	10100
Monroe	" "	125
Orange	" "	75
Pulaski	" "	30
Putnam	" "	300
Randolph	" "	245
St. Joseph	" "	285
Shelby	" "	135
Tippecanoe	" "	525
Vigo	" "	800
Wabash	" "	220
Washington	" "	20
White	" "	35
		16334

* Township.

The above personal property consists of horses, wagons, harnesses, safes, etc.

The following property, of the like description, is in use by the National Express Company, and is assessed to it for local taxation, but actually belongs to this company, being used by the National Express Company as agent of this company.

Allen.....	Horses, wagons, office fixtures, scales, safes...							920
Elkhart.....	"	"	"	"	"	"	...	208
Howard.....	"	"	"	"	"	"	...	205
Wells.....	"	"	"	"	"	"	...	208
								17875

324 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.
55 & 61 Hudson St. building.	New York, N. Y..	Rented.....	240000
157 Hudson St. building.	New York, N. Y..	Rented.....	13000
365 Broadway, building.	New York, N. Y..	Rented.....	375000
Cor. Broome & Elm Sts. building.	New York, N. Y..	Rented.....	75000
Cor. Main & Erie Sts. building.	Buffalo, N. Y.....	Rented.....	80000
Exchange St. building.	Buffalo, N. Y.....	Rented.....	16800
Canal & Friend Sts. building.	Boston, Mass.....	Rented.....	158500
Larned, First & Cass Sts. building.	Detroit, Mich	Rented.....	10000
Marshall St. building...	Paterson, N. J....	Rented	1500
			969800

The foregoing real estate is of the market value of $2,026,747.88

325 Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal

property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned by the company on the first day of April, 1899, and which is not, and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to *hases* having no relation whatever to the express business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April 1, 1899, was not less than $2,026,747.88.

On the first day of April, 1899, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept, by the company, so long as it owned the same, in the city of New York where its principal office is situated. No part of said investments was used by the company on the first day of April, 1899, or during the year then ending, in its express business, and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows:
Stock and bonds of corporations and companies, bills receivable,
bonds secured by mortgage upon real estate, and moneys
326 loaned on collateral, which were on the first day of April, 1899, of the market value of $16,600,120.95.

All of said stocks, bonds, mortgages, and other personal securities, or evidences of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for the inspection by any authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first of April, 1899, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts and other States and was, on that day, of the market value of not less than $3,094,545.28.

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1899, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c. of the value of $1,534,591.29. Said

last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which the same were situated. That of said amount of $1,534,591.20 less than $8,000 in value was situated in the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1899, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value exceeding the market value of the entire aggregate interests of the
327 associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said company and situated outside of said State.

This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of the Adams Express Company against the Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of the Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of the American Express Company against Indiana (165 U. S. 255).

328 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.
None.		

≠ Including 4515 miles over which the National Express Company so transports, merely as agent of and for account of this company.

ø Including 4100.30 miles over which the National Express Company so transports, merely as agent of and for account of this company.

Item 8. *a.* Total length of its lines or routes over which it transports merchandise, freight or express matter≠..... 163,020 miles.

b. Total length of such lines or routes as are *outside* of the State of Indianaø..... 160,806.96 miles.

c. Total length of its lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.
Allen	17	20
Bartholomew	15	30
Benton	40	87
Boone	38	76
Carroll	24	75
Clark	12	79
Clay	15	92
Clinton	28	65
Dearborn	25	82
Decatur	54	74
Delaware	20	54
Elkhart	26	64
Fayette	14	16
Floyd	9	02
Fountain	41	42
Franklin	31	32
Grant	19	94
Greene	25	40
Hamilton	16	94
Hancock	31	63
Hendricks	56	95
Henry	29	88
Jasper	41	49
Jennings	8	81
Johnson	19	97
Knox	6	85
Kosciusko	28	38
Lake	65	45
Laporte	81	35
Lawrence	41	05
Madison	52	02
Marion	87	38
Monroe	29	22
	1060	61

Counties. *	Miles.	Hdths.
Brought forward.	1060	61
Montgomery	49	83
Morgan	12	55
Newton	50	30
Orange	27	29
Owen	11	19
Parke	52	19
Porter	20	26
Posey	24	83
Pulaski	17	95
Putnam	68	93
Randolph	45	51
Ripley	9	76
Rush	25	55
Shelby	28	48
Starke	5	73
St. Joseph	10	24
Tippecanoe	44	72
Vanderburg	12	89
Vermilion	45	97
Vigo	31	84
Wabash	31	37
Warren	26	35
Washington	27	66
Wayne	14	33
White	42	01
	1798	34

And the following lines or routes over which National Express Company so transports merely as agent of and for account of this company.

Adams	16	76
Allen	28	21
Clinton	23	26

Counties. *	Miles.	Hdths.	Counties. *	Miles.	Hdths.
Elkhart	5	34	Parke		38
Fountain	25	12	Porter	32	25
Grant	25	69	St. Joseph	30	72
Huntington	8	10	Starke	15	04
Howard	26	74	Tippecanoe	6	65
Kosciusko	20	30	Vermilion	6	85
Lake	34	56	Wells	15	75
Laporte	36	17	Whitley	18	38
Marshall	22	53			
Montgomery	15	90	Total	2213	04

* Townships.

STATE OF OHIO, }
County of Cuyahoga, } *ss:*

R. D. Hughes gen'l *superintendent of the American Express Company, being duly sworn on oath say- that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

R. D. HUGHES,
Gen'l Superintendent.

Subscribed and sworn to before me, this 31st day of May, 1899.

[SEAL.] HENRY H. INKLEY,
Notary Public.

*This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of American Express Company. April 1, 1— Filed June 1, 19— W. H. Hart auditor of State.

329 Express companies.

1900.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests 180,000. of $100. each	$18,000,000.
Item 2. No. of shares of interests issued and outstanding 180,000 interests.	
a. Par or face value of each interest, all interests are of equal value	$100.
Item 3. Principal place of business New York, in the State of New York.	
Item 4. Market value of shares of stock on the 1st day of April, 1900	$140.
a. If shares have no market value then state actual value thereof	$—

This company is not a corporation, but a partnership or joint stock association organized under articles of agreement between its members. It possesses no rights, privileges, or franchises other than such as are enjoyed by any private individual or association of individuals.

330 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation *within the State of Indiana*, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	* Description of real estate, structure, machinery, etc.	Assessed value.
Bartholomew	Personal property	65
Clinton	" "	265
Decatur	" "	150
Delaware	" "	460
Elkhart	" "	250
Floyd	" "	159
Fayette	" "	90
Fountain	" "	40
Grant	" "	370
Henry	" "	44
Jasper	" "	30
Johnson	" "	15
Knox	" "	150
Lake	" "	225
Laporte	" "	265
Lawrence	" "	120
Madison	" "	395
Montgomery	" "	270
Monroe	" "	175
Marion	" and real estate	9600
Orange	" "	75
Pulaski	" "	30
Putnam	" "	300
Randolph	" "	185
Shelby	" "	135
St. Joseph	" "	250
Tippecanoe	" "	525
Vigo	" "	500
Vanderburg	" "	350
Wabash	" "	225
Washington	" "	20
		15724

* Township.

The above personal property consists of horses, wagons, harnesses, safes, &c., &c.

The following property, of the like description, is in use by the National Express Company and is assessed to it for local taxation, but actually belongs to this company—

being used by the National Express Company as agent of this company.

Allen	Horses, wagons, office fixtures, scales, safes...	935
Elkhart	" " " " " " ...	197
Howard	" " " " " " ...	209
Wells	" " " " " " ...	191
		17256

331 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.
55 & 61 Hudson St. building.	New York, N. Y..	Rented.....	$240000
157 Hudson St. building.	New York, N. Y..	Rented.....	13000
365 Broadway building.	New York, N. Y..	Rented.....	440000
Cor. Broome & Elm Sts. building.	New York, N. Y..	Rented.....	100000
Cor. Main & Erie St. building.	Buffalo, N. Y.....	Unoccupied...	80000
Exchange St. building.	Buffalo, N. Y.....	Rented.....	16800
Canal & Friend Sts. building.	Boston, Mass.....	Rented	228000
Larned, First & Cass Sts. building.	Detroit, Mich.....	Unoccupied...	10000
Marshall St. building...	Paterson, N. J.....	Unoccupied...	14000
			1,129200

The foregoing real estate is of the market value of $2,026,747.88.

332 (*Supplementary Report.*) No. 1.

American Express Company.

Itemized Statement of Mileage in the State of Indiana.

March 31st, 1900.

City, corp'n, or township.	Mileage.
Allen county.	
Adams, twp.	6.03
Jackson, twp.	4.23
Jefferson, twp.	6.05
Wayne, twp.	.89
	17.20
Bartholomew county.	
Columbus, twp.	3.30
Clay, twp.	1.16
Flat Rock, twp.	2.57
Hamercek, twp.	6.58
Columbus, city	1.69
	15.30
Benton county.	
Bolivar, twp	.71
Center, twp.	13.30
Oak Grove, twp.	9.64
Richland, twp	2.24
Union, twp.	6.01
York, twp	4.34
Earl Park, corp.	2.68
Fowler, corp.	1.47
Oxford, twp.	.48
	40.87
Boone county.	
Center, twp.	7.76
Eagle, twp.	5.47
Jefferson, twp.	1.60
Jackson, twp.	4.23
Sugar Creek, twp.	6.96
Worth, twp.	4.52
Washington, twp.	1.14
Jamestown, corp.	.42
Lebanon, corp.	1.19
Thorntown, corp.	.63
Zionsville, corp.	.69
Marion, city	5.35
	38.76
Carroll county.	
Clay, twp.	3.86
Deer Creek, twp.	5.74
Delphi, city	1.43
Jefferson, twp.	6.07
Madison, twp.	3.48
Tippecanoe, twp.	4.17
	24.75
Clark county.	
Carr, twp.	5.96
Wood, twp.	5.84
Silver Creek, twp.	.99
	12.79
Clay county.	
Brazil, twp.	2.08
Dick Johnson, twp.	8.50
Van Buren, twp.	4.03
Brazil, city	.64
Carbon, corp.	.69
	15.92
Clinton county.	
Center, twp.	2.19
Jackson, twp	4.07
Kirklin, twp.	6.52
Owen, twp.	1.15
Perry, twp.	3.14
Frankfort, city	1.37
Union, city	4.31
Rose, twp.	1.05
Colfax, corp.	.73
Kirklin, corp.	.52
Rossville, corp.	.60
	28.65

City, corp'n, or township.	Mileage.
Dearborn county.	
Harrison, twp.	5.27
Jackson, twp.	3.92
Lawrenceburg, twp.	4.26
Miller, twp.	3.07
Manchester, twp.	.64
York, twp.	7.68
W. Harrison, corp.	.98
	25.82
Delaware county.	
Center, twp.	3.77
Liberty, twp.	5.97
Mt. Pleasant, twp.	4.77
Muncie, corp.	2.29
Salem, twp.	3.74
	20.54
333 **Decatur county.**	
Clay, twp.	9.60
Adams, twp.	5.01
Clinton, twp.	5.18
Newpoint, corp.	.55
Salt Creek, twp.	4.35
Sand Creek	8.47
Washington, twp.	19.20
Westport, twp.	1.09
Greensburg, city	1.29
	54.74
Elkhart county.	
Cleveland, twp.	3.25
Concord, twp.	6.29
Elkhart, twp.	5.58
Jackson, twp.	6.13
Oscola, twp.	.74
Elkhart, city	2.61
Goshen, twp.	2.04
	26.64
Fayette county.	
Connersville, twp.	3.09
Columbia, twp.	5.96
Harrison, twp.	4.03
Connersville, city	1.17
	14.16
Floyd county.	
New Albany	6.65
New Albany, city	2.37
	9.02
Fountain county.	
Cain, twp.	6.63
Van Buren, twp.	11.31
Troy, twp.	4.18
Logan, twp.	1.49
Shawnee, twp.	5.20
Mill Creek, twp.	8.35
Attica, city	1.26
Veedersburg, corp.	1.50
Covington, corp.	1.50
	41.42
Franklin county.	
Ray, twp.	3.52
Laurel, twp.	5.18
Metamora, twp.	5.07
Brookville, twp.	10.33
Highland, twp.	1.69
White Water, twp.	4.53
Laurel, corp.	.30
Brookville, corp.	.70
	31.32

City, corp'n, or township.	Mileage.
Grant county.	
Washington, twp.	2.82
Pleasant, twp.	2.93
Center, twp.	2.07
Mill, twp.	3.70
Fairmount, twp.	3.59
Fairmount, corp.	1.53
Jonesboro, corp.	.45
Marion, city	2.85
	19.94
Green county.	
Jackson, twp.	8.10
Taylor, twp.	4.25
Richland, twp.	6.00
Grant, twp.	4.28
Fairplay, twp.	5.65
Stockton, twp.	6.89
Bloomfield, city	1.40
	36.57
Hamilton county.	
Clay, twp.	4.50
Carmel, twp.	.75
Washington, twp.	6.58
Westfield, twp.	.82
Adams, twp.	3.44
Sheridan, twp.	.75
	16.84
Hancock county.	
Vernon, twp.	6.38
Brown, twp.	10.21
Jackson, twp.	1.17
Center, twp.	7.15
Buck Creek, twp.	6.11
Fortville, twp.	.61
	31.43
Hendricks county.	
Washington, twp.	7.47
Lincoln, twp	10.88
Middle, twp.	7.36
Union, twp.	8.39
Eel River, twp.	8.27
Center, twp.	5.90
Marion, twp.	2.71
Clay, twp.	3.72
Browns, twp.	.53
Brownsburg, corp.	1.09
Danville, corp.	.63
	56.95
334 **Henry county.**	
Blue River, twp.	5.58
Prairie, twp.	2.45
Henry, twp.	6.40
Greensburg, twp.	8.49
Wayne, twp.	5.81
Knightstown, corp.	.82
Moorelaud, corp.	.32
New Castle, city	.01
	29.88
Jasper county.	
Kankakee, twp.	3.80
Wheatfield, twp.	2.78
Walker, twp.	4.78
Keener, twp.	.02
Union, twp.	14.46
Hanging Grove, twp.	3.12
Mariol, twp.	8.37
Rensselaer, twp.	1.17
Newton, twp.	2.99
	41.49
Jennings county.	
Center, twp.	2.60
Sand Creek, twp.	5.62
No. Vernon, twp.	.59
	8.81
Johnson county.	
Franklin, twp.	3.87
Needham, twp.	5.74
Clark, twp.	.42
Hensley, twp.	7.05
Nineveh, twp.	1.34
Franklin, city	1.55
	19.97

City, corp'n, or township.	Mileage.
Knox county.	
Vincennes	.26
Vincennes, twp.	6.59
	6.85
Kosciusko county.	
Van Buren, twp.	5.67
Plain, twp.	5.46
Wayne, twp.	5.51
Clay, twp.	4.62
Lake, twp.	4.80
Milford, corp.	.32
Leesburg, corp.	.50
Claypool, corp.	.39
Silver Lake, corp.	.21
Warsaw, city	.90
	28.38
Lake county.	
Hobart, twp.	9.32
Calumet, twp.	11.81
North, twp.	7.68
St. Johns, twp.	12.97
Cedar Creek, twp.	11.15
Lowell, twp.	.55
Wt. Creek, twp.	.97
Hanover, twp.	6.02
Hammond, city.	4.98
	65.45
Laporte county.	
Dewey, twp.	15.14
Case, twp.	8.53
Clinton, twp.	5.82
New Durham, twp.	5.58
Westville, twp.	.50
Coal Springs, twp.	6.75
Springville, twp.	5.90
Center, twp.	4.64
Scipio, twp.	5.94
Noble, twp.	5.94
Hanna, twp.	4.82
Springfield, twp.	1.03
Michigan twp.	3.96
Michigan, city	5.49
La Porte, twp.	1.31
	81.35
Lawrence county.	
Marion, twp.	8.29
Shawswick, twp.	11.38
Marshall, twp.	9.87
Indian Creek, twp.	.50
Perry, twp.	7.83
Bedford, city	2.11
Mitchell, corp.	1.07
	41.05
Madison county.	
Union, twp.	3.65
Anderson, twp.	9.50
Fall Creek, twp.	6.26
Green, twp.	1.85
Van Buren, twp.	4.16
Monroe, twp.	5.43
Lafayette, twp.	5.83
Adams, twp.	7.72
Ingalls, corp.	.80
Pendleton, corp.	.43
Summitville, corp.	.51
Alexandria, corp.	1.34
Anderson, corp.	1.67
Anderson, city	2.87
	52.02
335 **Marion county.**	
Center, twp.	4.77
Washington, twp.	8.60
No. Indianapolis, twp.	.75
Hughville, twp.	1.30
Wayne, twp.	18.96
Warren, twp.	9.46
Franklin, twp.	8.49
Pine, twp.	6.27
Lawrence, twp.	7.54
Indianapolis, city	21.24
	87.38

City, corp'n, or township.	Mileage.	
Monroe county.		
Clear Creek, twp	6.56	
Perry, twp	6.54	
Bloomington, twp	1.60	
Richland, twp	6.28	
Bean Blossom, twp	6.81	
Bloomington, city	1.43	
		29.22
Montgomery county.		
Clark, twp	3.81	
Ladoga, twp	.87	
Scott, twp	1.72	
Union, twp	20.78	
Madison, twp	6.07	
Walnut, twp	6.33	
Wayne, twp	6.37	
Crawfordsville, city	2.80	
New Ross, corp	.51	
Waynetown, corp	.57	
		49.83
Morgan county.		
Jackson, twp	6.17	
Washington, twp	5.80	
Martinsville, corp	.58	
		12.55
Newton county.		
Jefferson, twp	1.43	
Lincoln, twp	6.72	
McClellan, twp	2.49	
Beaver, twp	6.49	
Washington, twp	2.93	
Iroquois, twp	10.83	
Grant, twp	7.19	
Morocco, twp	.92	
Brook, twp	.45	
Goodland, twp	1.01	
Colfax, twp	3.82	
Jackson, twp	6.02	
		50.30
Orange county.		
No. East, twp	4.06	
Orleans, twp	8.06	
Paoli, twp	6.75	
French Lick, twp	6.20	
Orleans, twp	.87	
Paoli, corp	1.35	
		27.29
Owen county.		
Wayne, twp	5.00	
Harrison, twp	3.72	
Taylor, twp	2.12	
Gosport, corp	.35	
		11.19
Parke county.		
Florida, twp	10.45	
Jackson, twp	1.07	
Green, twp	5.96	
Washington, twp	6.43	
Penn, twp	3.41	
Reserve, twp	10.65	
Wabash, twp	6.80	
Liberty, twp	6.81	
Rosedale, corp	.61	
		52.19
Porter county.		
Pleasant, twp	3.22	
Pine, twp	4.76	
Portage, twp	4.19	
W't Chester, twp	8.09	
		20.26
Posey county.		
Bethel, twp	5.91	
Robert, twp	10.35	
Smith, twp	4.38	
Harmony, twp	3.45	
Poseyville, corp	.38	
New Harmony, corp	.36	
		24.83
Pulaski county.		
Salem, twp	5.42	
White Post, twp	5.99	
Cass, twp	6.04	
Francisville, corp	.50	
		17.95

City, corp'n, or township.	Mileage.	
336 **Putnam county.**		
Jackson, twp	5.62	
Franklin, twp	11.42	
Russell, twp	6.01	
Floyd, twp	2.17	
Marion, twp	4.00	
Greencastle, twp	13.89	
Madison, twp	6.43	
Cloverdale, twp	5.44	
Warren, twp	6.54	
Monroe, twp	6.10	
Cloverdale, corp	.40	
Bainbridge, corp	.18	
Roachdale, corp	.29	
Greencastle, city	.44	
		68.93
Randolph county.		
Wayne, twp	4.06	
White River, twp	9.19	
Monroe, twp	5.46	
Greensburg, twp	6.91	
Washington, twp	5.12	
West River, twp	5.54	
Farmland, corp	.28	
Parker, city	.82	
Winchester, corp	1.91	
Union City, corp	1.04	
Lynn, corp	.76	
Bronson, corp	.27	
Nettle Creek, twp	5.05	
		45.51
Ripley county.		
Adams, twp	8.18	
Laughrey, twp	.58	
Batesville, corp	1.00	
		9.76
Rush county.		
Ripley, twp	5.65	
Posey, twp	1.84	
Jackson, twp	2.80	
Rushville, twp	7.16	
Anderson, twp	6.07	
Carthage, corp	1.40	
Rushville, city	.63	
		25.55
Sullivan county.		
Cass, twp	2.37	
Hamilton, twp	8.22	
Gill, twp	10.25	
		20.84
Shelby county.		
Noble, twp	1.08	
Liberty, twp	4.05	
Shelby, twp	2.26	
Addison, twp	5.16	
Brandywine, twp	5.18	
Sugar Creek, twp	6.39	
Moral, twp	3.76	
Shelbyville, corp	.60	
		28.48
Starke county.		
Railroad, twp	5.73	
		5.73
St. Joseph county.		
Harris, twp	4.18	
Clay, twp	4.59	
So. Bend, city	1.47	
		10.24
Tippecanoe county.		
Lauramie, twp	6.63	
Sheffield, twp	2.79	
Wea, twp	7.42	
Fairfield, twp	5.00	
Randolph, twp	5.90	
Union, twp	5.41	
Tippecanoe, twp	5.86	
Battle Ground, twp	.77	
Clark's Hill, corp	.65	
Lafayette, city	4.29	
		44.72

City, corp'n, or township.	Mileage.	
Vanderburg county.		
Armstrong, twp.	4.07	
Germantown, twp.	4.97	
Center, twp.	1.93	
Pigeon, twp.	.78	
Evansville, city	1.14	
		12.89
Vermilion county.		
Holt, twp	18.13	
Highland, twp.	11.06	
Eugene, twp.	6.09	
Vermilion, twp.	6.73	
Clinton, twp	2.06	
Cayuga, corp	.98	
Newport, city	.24	
Clinton, city	.68	
		45.97
Vigo county.		
Nevins, twp	10.94	
Otter Creek, twp.	8.12	
Harrison, twp.	5.62	
Sugar Creek, twp.	4.91	
Fayette, twp.	2.92	
Terre Haute, city	1.33	
		31.84
Wabash county.		
Pleasant, twp.	3.17	
Chester, twp.	7.04	
Lagro, twp.	5.34	
Noble, twp.	5.04	
Waltz, twp.	.35	
Liberty, twp.	7.09	
No. Manchester, corp.	.58	
Wabash, city	2.76	
		31.37

City, corp'n, or township.	Mileage.	
Warren county.		
Pike, twp.	2.06	
Steuben, twp.	4.08	
Jordan, twp.	2.98	
Adams, twp.	6.02	
Warren, twp.	6.73	
Washington, twp.	.41	
Mound, twp.	4.97	
		26.35
Washington county.		
Polk, twp.	3.10	
Pierce, twp.	3.58	
Washington, twp.	13.34	
Vernon, twp.	2.65	
Brown, twp.	1.61	
Saltillo, twp.	1.28	
Salem, corp.	.96	
Campbellsburg, corp.	1.14	
		27.66
Wayne county.		
Jefferson, twp.	2.12	
Jackson, twp.	4.88	
Washington, twp.	5.79	
Milton, corp.	.50	
Hagerstown, corp.	.18	
Cambridge, city	.86	
		14.33
White county.		
Prairie, twp.	5.63	
Big Creek, twp.	6.06	
Honey Creek, twp.	7.51	
Monon, twp.	14.37	
Union	4.41	
Brookston, corp.	.50	
Reynolds, corp.	.74	
Monon, corp.	1.21	
Monticello, corp.	1.58	
		42.01

338 Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned by the company on the first day of April, 1900, and which is not, and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to uses having no relation whatever to the express business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April 1, 1900, was not less than $2,026,747.88.

On the first day of April, 1900, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept, by the company, so long as it owned the same, in the city of New York, where its principal office is situated. No part of said investments was used by the company on the first day of April, 1900, or during the year then ending, in its express business, and the said invest-

ments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows:
Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys
339 loaned on collateral, which were on the first day of April, 1900, of the market value of $18,640,461.13.

All of said stocks, bonds, mortgages, and other personal securities, or evidence of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by any authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first of April, 1900, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts, and other States, and was, on that day, of the market value of not less than $3,094,545.28.

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1900, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c., of the value of $1,597,294.20. Said last mentioned personal property was scattered through a large number of different States and foreign countries, and was subject to local taxation in the various jurisdictions in which the same was situated. That of the said amount of $1,597,294.20, less than $8,000 in value was situated in the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1900, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value exceeding the market value of the entire aggregate interests of the
340 associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said company and situated outside of said State.

The claim on the part of the company is founded, among

other things, upon the opinion of Mr. Chief Justice Fuller in the case of The Adams Express Company *vs.* The Ohio State Auditor (165 U. S. 194), and upon the opinion of Mr. Justice Brewer in the case of The Adams Express Company *vs.* Ohio State Auditor (166 U. S. 185), the first of these cases having been followed by the Supreme Court in the case of the American Express Company against Indiana (165 U. S. 255).

341 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.
None.		

Including 4,373.88 miles over which National Express Company so transports, merely as agent of and for account of this company.

ø Including 3,959.18 miles over which National Express Company so transports, merely as agent of and for account of this company.

Item 8. *a.* Total length of its lines or routes over which it transports merchandise, freight or express matter #..... 162,619.17 miles.

b. Total length of such lines or routes as are *outside* of the State of Indiana ø..... 160,374.12 miles.

c. Total length of its lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.	Counties. *	Miles.	Hdths.
Allen	17	20	Hamilton	16	94
Bartholomew	15	30	Hancock	31	63
Benton	40	87	Hendricks	56	95
Boone	38	76	Henry	29	88
Carroll	24	75	Jasper	41	49
Clark	12	79	Jennings	8	81
Clay	15	92	Johnson	19	97
Clinton	28	65	Knox	6	85
Dearborn	25	82	Kosciusko	28	38
Delaware	20	54	Lake	65	45
Decatur	54	74	Laporte	81	35
Elkhart	26	64	Lawrence	41	05
Fayette	14	16	Madison	52	02
Floyd	9	02	Marion	87	38
Fountain	41	42	Monroe	29	22
Franklin	31	32			
Grant	19	94		1071	78
Green	36	57			

Counties. *	Miles.	Hdths.
Forward.....	1071	78
Montgomery	49	83
Morgan	12	55
Newton	50	30
Orange	27	29
Owen	11	19
Parke	52	19
Porter	20	26
Posey.....	24	83
Pulaski.....	17	95
Putnam.....	68	93
Randolph	45	51
Ripley	9	76
Rush	25	55
Sullivan	20	84
Shelby.....	28	48
Starke	5	73
St. Joseph	10	24
Tippecanoe.....	44	72
Vanderburg	12	89
Vermilion	45	97
Vigo	31	84
Wabash.....	31	37
Warren	26	35
Washington	27	66
Wayne	14	33
White	42	01
	1830	35

Counties. *	Miles.	Hdths.
And the following lines or routes over which National Express Company so transports merely as agent of and for account of this company.		
Adams.....	16	76
Allen	28	21
Clinton	23	26
Elkhart	5	34
Fountain.....	25	12
Grant.....	25	69
Huntington	8	10
Howard.....	26	74
Kosciusko.....	20	30
Lake	34	56
Laporte.....	36	17
Marshall.....	22	53
Montgomery.....	15	90
Parke		38
Porter	32	25
St. Joseph	30	72
Starke	15	04
Tippecanoe.....	6	65
Vermilion	6	85
Wells.....	15	75
Whitley	18	38
Total.....	2245	05

* Townships. See statement herewith.

STATE OF NEW YORK, } ss:
County of New York, }

J. Francis Flagg, vice president of the American Express Company, being duly sworn on oath say- that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

J. FRANCIS FLAGG,
Vice President.

Subscribed and sworn to before me, this 29th day of May, 1900.

GEO. E. PARKER, [SEAL.]
Notary Public, (9) *New York County.*

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*This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of American Express Company. April 1, 1— Filed June 1, 1900 W. H. Hart auditor of State.

342 Express companies.

1898.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the National Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests 5000 of $100 each.....	$500,000.
Item 2. No. of interests issued and outstanding 5,000 interests.	
a. Par or face value of each interest.....	$100
Item 3. Principal place of business New York in the State of New York.	
Item 4. Market value of each interest on the 1st day of April, 1898.....	None.
a. If interests have no market value then state actual value thereof.....	Not more than par.

This company is not a corporation, but a partnership or joint stock company organized under articles of agreement between its members. It possesses no rights, privileges, or franchises other than such as are enjoyed by any private individual or association of individuals. It owns no property within the State of Indiana and transports no merchandise, freight or express matter therein for its own account.

As agent of the American Express Company it has in its possession and uses in the State of Indiana certain personal property, consisting of horses, wagons, scales, safes and office fixtures, which are the property of the American Express Company. The same are assessed to this company for local taxation, but the taxes thereon are actually paid by the funds of the American Express Company. All the expenses of the business of this company in Indiana are paid by the funds of the American Express Company, and all its receipts for

business within said State belong to and are paid to the American Express Company. All merchandise, freight and express matter nominally forwarded by this company in Indiana *is* in fact forwarded for account of the American Express Company.

343 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation *within the State of Indiana*, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

This company owns no property in Indiana :—but the following described property belonging to the American Express Company and included in the report of the latter company under the law under which the present report is made, is in the possession of this company and is used by it as agent of the American Express Company, although the same is assessed for local taxation to this company, the taxes thereon being paid by funds of the American Express Company.

County.	Township.	Description of real estate, structure, machinery, etc.	Assessed value.
Allen	Fort Wayne	4 wagons	200
		4 horses	250
		Office fixtures	40
		2 scales	20
		3 safes	100
Elkhart	Elkhart	1 wagon	25
		1 horse	50
Howard	Kokomo	1 wagon	25
		1 horse	40
		2 scales	5
		2 safes	30
		Office fixtures	10
Wells	Bluffton	1 wagon	50
		1 horse	40
		1 scale	5
		I safe	15

344 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.

This company *owns* no real estate.

This company carries on the express business on certain lines of railroad situated in New York, & Pennsylvania and east thereof for its own account. All express business nominally transported by this company west of those lines is in fact carried on by it as agent of and for account of the American Express Company to whom all receipts of such business and all property used therein belong and by whom all the expenses and risks of such business are borne.

This company owns certain property consisting of money, bills receivable, horses, wagons, harnesses, safes and other equipment none of which is used in connection with any business carried on in Indiana, and all of which is actually situated in New York, Pennsylvania or States east thereof. Said property so owned by this company is of the actual value of $176,289.52.

All of the equipment last above mentioned is used by this company in connection with the business carried on by ~~it for its own~~ account on the eastern lines above mentioned..... $176289 52

The lines of railroad in Indiana over which this company nominally forwards merchandize, freight or express matter, but over which in fact it forwards the same as agent of and for account of the American Express Company, are included in and separately specified in the report of the American Express Company made under said law to the auditor of State of Indiana.

345 (*Supplementary Report.*) No. 1.

National Express Company, as agent of the American Express Company.

Itemized Statement of Mileage in the State of Indiana.

City, corp'n or township.	Mileage.	
Adams county.		
St. Marys	5.15	
Decatur	1.23	
Washington	5.83	
Kirkland	4.55	
		16.76
Allen county.		
Jackson	4.27	
Jefferson	6.07	
Adams	5.78	
Ft. Wayne	3.26	
Wayne	3.05	
Aboite	5.78	
		28.21
Clinton county.		
Forest	3.48	
Michigan	6.99	
Union	.82	
Center	3.31	
Frankfort	1.37	
Washington	7.13	
Pearl	.16	
		23.26
Elkhart county.		
Elkhart	1.81	
Concord	.51	
Cleveland	3.02	
		5.34
Fountain county.		
Richland	6.14	
Van Buren	6.68	
Veedersburg	1.01	
Wabash	2.48	
Mill Creek	1.94	
Fulton	6.87	
		25.12
Grant county.		
Van Buren	5.37	
Van Buren, corp	.66	
Washington	5.79	
Center	.17	
Marion	3.52	
Franklin	6.09	
Sims	4.09	
		25.69
Huntington county.		
Salaminie	5.62	
Warren	.80	
Jefferson	1.68	
		8.10
Howard county.		
Jackson	4.09	
Liberty	3.88	
Greentown	.50	
Howard	4.01	
Center	4.81	
Kokomo	1.58	
Harrison	2.95	
Honey Creek	4.92	
		26.74
Kosciusko county.		
Jackson	6.05	
Clay	6.10	
Seward	4.39	
Franklin	2.99	
Harrison	.87	
		20.30
Lake county.		
Hobart	9.25	
North	8.78	
Rose	9.23	
St. John	2.39	
Webb	4.91	
		34.56

City, corp'n or township.	Mileage.	
Laporte county.		
Hanna	5.03	
Case	6.53	
Lincoln	5.43	
Pleasant	2.64	
Union	5.32	
Noble	5.28	
Clinton	5.94	
		36.17
Montgomery.		
Sugar Creek	.18	
Madison	6.45	
Cool Creek	8.55	
New Richmond	.72	
		15.90

346 No. 2.

Marshall county.		
Tippecanoe	5.76	
Walnut	5.44	
Green	4.96	
Union	6.37	
		22.53
Parke county.		
Liberty	.38	
		.38
Porter county.		
Morgan	3.26	
Washington	7.26	
Center	10.16	
Union	9.95	
Portage	.57	
Valparaiso	1.04	
		32.24
St. Joseph county.		
Harris	3.99	
Penn	10.75	
Mishawaka	.82	
Portage	4.60	
So. Bend	2.85	
Warren	3.88	
Olive	3.83	
		30.72
Starke county.		
Washington	6.27	
Center	7.11	
Jackson	1.26	
Davis	.40	
		15.04
Tippecanoe county.		
Lauramie	6.10	
Clark Hill	.55	
		6.65
Vermilion county.		
Eugene	5.88	
Cayuga	.97	
		6.85
Whitley county.		
Jefferson	6.03	
Washington	6.07	
Cleveland	6.28	
		18.38
Wells county.		
Lancaster	6.39	
Bluffton	1.10	
Harrison	1.98	
Liberty	6.28	
		15.75

347 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.

None.

Item 8. (*a.*) The total length of lines or routes over which this company transports merchandise, freight or express matter for its own account (all of said lines or routes being situated in New York, Pennsylvania or east thereof) is..... 1261 miles.

(*b.*) The total length of lines or routes over which this company transports merchandise, freight or express matter, as agent of the American Express Company, in the manner above set forth, is.. 4565 miles.

(*c.*) The total length of said last mentioned routes or lines as are outside of the State of Indiana, is..... 4150.30 miles.

Item 8. *c.* Total length of said last mentioned lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.	Counties. *	Miles.	Hdths.
Adams	16	76	Montgomery	15	90
Allen	28	21	Parke		38
Clinton	23	26	Porter	32	25
Elkhart	5	34	St. Joseph	30	72
Fountain	25	12	Starke	15	04
Grant	25	69	Tippecanoe	6	65
Huntington	8	10	Vermilion	6	85
Howard	26	74	Wells	15	75
Kosciusko	20	30	Whitley	18	38
Lake	34	56		414	70
Laporte	36	17			
Marshall	22	53			

* Townships.

STATE OF NEW YORK, } ss:
County of New York, }

J. W. Huitt, * gen'l manager of the National Express Company, being duly sworn on oath say- that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

J. W. HUITT,
Gen'l Manager.
—— ——, *Secretary.*

Subscribed and sworn to before me, this 31st day of May, 1898.

J. W. HUITT,
Gen'l Manager.

GEO. RUSTON,
[SEAL.] *Notary Public,* # 54, *N. Y. Co.*

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* This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of National Express Co. April 1, 1— Filed June 4, 1898 A. C. Daily auditor of state.

348 Express companies.

1899.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the National Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1.	Total number of interests, 5,000 of $100 each...	$500,000.
Item 2.	No. of interests issued and outstanding 5000 interests	
	a. Par or face value of each interest.....	$100.
Item 3.	Principal place of business New York, in the State of New York.	
Item 4.	Market value of each interest on the 1st day of April, 1899	None.
	a. If interests have no market value then state actual value thereof.....	Not more than par.

This company is not a corporation, but a partnership or joint stock company organized under articles of agreement between its members—It possesses no rights, privileges or franchises other than such as are enjoyed by any private individual or association of individuals. It owns no property within the State of Indiana, and transports no merchandise, freight or express matter therein for its own account.

As agent of the American Express Company it has in its possession and uses in the State of Indiana, certain personal property, consisting of horses, wagons, scales, safes, office fixtures, which are the property of the American Express Company. The same are assessed to this company for local taxation, but the taxes thereon are actually paid by the funds of the American Express Company. All the expenses of the business of this company in Indiana are paid by the funds of the American Express Company, and all its receipts for business within said State belong to and are paid to the American Express Company. All merchandise, freight and express matter nominally forwarded by this company in Indiana, is in fact forwarded for account of the American Express Company.

349 This company owns no property in Indiana—but the following described property belonging to the American Express Company and included in the report of the latter company under the law under which the present report is made, is in the possession of this company and is used by it as agent of the American

Express Company, although the same is assessed for local taxation to this company, the taxes thereon being paid by funds of the American Express Company:

County.	Office.	Description of real estate, structure, machinery, etc.	Assessed value.
Allen	Fort Wayne	4 wagons	335
		4 horses	235
		4 harnesses	56
		Office fixtures	142
		3 safes	90
		5 trucks	34
		1 press	10
		2 scales	18
Elkhart	Elkhart	1 horse	55
		1 wagon	80
		1 harness	23
		1 scale	11
		2 trucks	32
		1 press	7
Howard	Kokomo	1 horse	45
		1 wagon	55
		2 scales	6 75
		2 safes	61
		1 truck	9
		1 press	8 50
		Fixtures	16 70
		1 harness	3 05
Wells	Bluffton	1 horse	70
		1 wagon	85
		1 safe	13 50
		1 scale	5
		1 copy press	9 50
		1 harness	25

350 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.

This company *owns* no real estate.

This company carries on the express business on certain lines of railroad situated in New York and Pennsylvania and east thereof, for its own account. All express business nominally transacted by this company west of those lines is in fact carried on by it as agent of and for account of the American Express Company, to whom all receipts of such business and all property used therein belong and by whom all the expenses and risks of such business are borne.

This company owns certain property consisting of money, bills receivable, horses, wagons, harnesses, safes and other equipment none of which is used in connection with any business carried on in Indiana, and all of which is actually situated in New York, Pennsylvania or States east thereof. Said property so owned by this company is of the actual value of $173,372.43.

All of the equipment last above mentioned is used by this company in connection with the business carried on by it and for its own account on the eastern lines above mentioned.

The lines of railroad in Indiana over which this company nominally forwards merchandise, freight or express matter, but over which in fact it forwards the same as agent of and for account of the American Express Company, are included in and separately specified in the report of the American Express Company made under said law to the auditor of State of Indiana.

351 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.

None.

Item 8. (*a.*) The total length of lines or routes over which this company transports merchandise, freight or express matter for its own account, (all of said lines or routes being situated in New York Pennsylvania or east thereof) is..... 1544 miles.

(*b.*) The total length of lines or routes over which this company transports merchandise, freight or express matter, as agent of the American Express Company, in the manner above set forth, is.. 4515 miles.

(*c.*) The total length of said last mentioned lines or routes as are outside of the State of Indiana, is..... 4100.30 miles.

Item 8. *d.* Total length of said last mentioned lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.	Counties. *	Miles.	Hdths.
Adams	16	76	Montgomery	15	90
Allen	28	21	Parke		38
Clinton	23	26	Porter	32	25
Elkhart	5	34	St. Joseph	30	72
Fountain	25	12	Starke	15	04
Grant	25	69	Tippecanoe	6	65
Huntington	8	10	Vermilion	6	85
Howard	26	74	Wells	15	75
Kosciusko	20	30	Whitley	18	38
Lake	34	56			
Laporte	36	17		414	70
Marshall	22	53			

* Townships.

STATE OF NEW YORK, } ss:
County of New York, }

J. W. Huitt, *gen'l manager of the National (Express) Express Company, being duly sworn on oath say- that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

J. W. HUITT,
Gen'l Manager.

Subscribed and sworn to before me, this 26" day of May, 1899.

[SEAL.] CHARLES EDGAR MILLS,
Notary Public, New York Co.

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*This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of National Express Company. April 1, 1— Filed June 1, 19— W. H. Hart, auditor of State.

352 Express companies.

1900.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the National Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1.	Total number of interests 5000 of $100 each.....	$500,000.
Item 2.	No. of interests issued and outstanding 5000 interests.	
	a. Par or face value of each interest.....	$100.
Item 3.	Principal place of business New York, in the State of New York.	
Item 4.	Market value of each interest on the 1st day of April, 1900.....	None.
	a. If interests have no market value then state actual value thereof.....	Not more than par.

This company is not a corporation, but a partnership or joint stock company organized under articles of agreement between its members. It possess- no rights, privileges, or franchises other than such as are enjoyed by any private individual or association of individuals. It owns no property within the State of Indiana and transports no merchandise, freight or express matter therein for its own account.

As agent of the American Express Company it has in its possession and uses in the State of Indiana certain personal property, consisting of horses, wagons, scales, safes, office fixtures, which are the property of the American Express Company. The same are assessed to this company for local taxation, but the taxes thereon are actually paid by the funds of the American Express Company. All the expenses of the business of this company in Indiana are paid by the funds of the American Express Company, and all its receipts for business within said State belong to and are paid to the American Express Company. All merchandise, freight and express matter nominally forwarded by this company in Indiana *is* in fact forwarded for account of the American Express Company.

353 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation *within the State of Indiana*, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

This company owns no property in Indiana—but the following described property belonging to the American Express Company and included in the report of the latter company under the law under which the present report is made, is in the possession of this company and is used by it as agent of the American Express Company, although the same is assessed for local taxation to this company, the taxes thereon being paid by funds of the American Express Company.

County.	Office.	Description of real estate, structure, machinery, etc.	Assessed value.
Allen	Fort Wayne	Office furniture	119
		3 safes	92
		2 scales	16
		5 trucks	30
		1 copy press	9
		4 horses	285
		4 single wagons	299
		4 single harnesses	50
		Fittings, &c	35
Elkhart	Elkhart	Office furniture	2
		2 scales	12
		2 trucks	28
		1 copy press	7
		1 horse	50
		1 single wagon	72
		1 single harness	21
		Fittings	5
Howard	Kokomo	Office furniture	13
		2 safes	58
		1 truck	8
		2 scales	6
		1 copy press	8
		1 horse	40
		1 single wagon	55
		1 single harness	15
		Fittings, &c	6
Wells	Bluffton	Office fixtures	7
		1 safe	12
		1 scale	4
		1 copy press	9
		1 horse	60
		1 single wagon	75
		1 single harness	22
		Fittings, &c	2
			1532

354 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.

This company owns no real estate.

This company carries on the express business on certain lines of railroad situated in New York and Pennsylvania and east thereof, for its own account. All express business nominally transacted by this company west of those lines is in fact carried on by it as agent of and for account of the American Express Company, to whom all receipts of such business and all property used therein belong and by whom all the expenses and risks of such business are borne—

This company owns certain property consisting of money, bills receivable, horses, wagons, harnesses, safes and other equipment, none of which is used in connection with any business carried on in Indiana, and all of which is actually situated in New York, Pennsylvania or States east thereof— Said property so owned by this company is of the actual value of $173,576.14.

All of the equipment last above mentioned is used by this company in connection with the business carried on by it and for its own account on the eastern lines above mentioned.

The lines of railroad in Indiana over which this company nominally forwards merchandise, freight or express matter, but over which in fact it forwards the same as agent of and for account of the American Express Company, are included in and separately specified in the report of the American Express Company made under said law to the auditor of State of Indiana.

355 (*Supplementary Report.*) No. 1.

National Express Company, as agent of the American Express Company.

Itemized Statement of Mileage in the State of Indiana.

March 31st, 1900.

City, corp'n or township.	Mileage.	
Adams county.		
St. Marys	5.15	
Decatur	1.23	
Washington	5.83	
Kirkland	4 55	
		16.76
Allen county.		
Jackson	4.27	
Jefferson	6.07	
Adams	5.78	
Ft. Wayne	3.26	
Wayne	3.05	
Aboite	5.78	
		28.21
Clinton county.		
Forest	3.48	
Michigan	6.99	
Union	.82	
Center	3.31	
Frankfort	1.37	
Washington	7.13	
Pearl	.16	
		23.26
Elkhart county.		
Elkhart	1.81	
Concord	.51	
Cleveland	3.02	
		5.34
Fountain county.		
Richland	6.14	
Van Buren	6.68	
Veedersburg	1.01	
Wabash	2.48	
Mill Creek	1.94	
Fulton	6.87	
		25.12
Grant county.		
Van Buren	5.37	
Van Buren, corp	.66	
Washington	5.79	
Center	.17	
Marion	3.52	
Franklin	6.09	
Sims	4.09	
		25.69
Huntington county.		
Salaminie	5.62	
Warren	.80	
Jefferson	1.68	
		8.10
Howard county.		
Jackson	4.09	
Liberty	3.88	
Greentown	.50	
Howard	4.01	
Center	4.81	
Kokomo	1.58	
Harrison	2.95	
Honey Creek	4.92	
		26.74
Kosciusko county.		
Jackson	6.05	
Clay	6.10	
Seward	4.29	
Franklin	2.99	
Harrison	.87	
		20.30
Lake county.		
Hobart	9 25	
North	8.78	
Rose	9.23	
St. John	2.39	
Webb	4.91	
		34.56

City, corp'n or township.	Mileage.	
Laporte county.		
Hanna	5.03	
Case	6.53	
Lincoln	5.43	
Pleasant	2.64	
Union	5.32	
Noble	5 28	
Clinton	5.94	
		36.17
Montgomery.		
Sugar Creek	.18	
Madison	6.45	
Cool Creek	8.55	
New Richmond	.72	
		15.90

356 No. 2.

Marshall county.		
Tippecanoe	5.76	
Walnut	5.44	
Green	4.96	
Union	6.37	
		22.53
Parke county.		
Liberty	.38	
		.38
Porter county.		
Morgan	3.26	
Washington	7.26	
Center	10.16	
Union	9.95	
Portage	.57	
Valparaiso	1.04	
		32.24
St. Joseph county.		
Harris	3.99	
Penn	10.75	
Mishawaka	.82	
Portage	4.60	
So. Bend	2.85	
Warren	3.88	
Olive	3.83	
		30.72
Starke county.		
Washington	6.27	
Center	7.11	
Jackson	1.26	
Davis	.40	
		15.04
Tippecanoe county.		
Lauramie	6.10	
Clark Hill	.55	
		6.65
Vermilion county.		
Eugene	5.88	
Cayuga	.97	
		6.85
Whitley county.		
Jefferson	6.03	
Washington	6.07	
Cleveland	6.28	
		18.38
Wells county.		
Lancaster	6.39	
Bluffton	1.10	
Harrison	1.98	
Liberty	6.28	
		15.75

357 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.

None.

Item 8. (*a.*) The total length of lines or routes over which this company transports merchandise, freight or express matter for its own account, (all of said lines or routes being situated in New York Pennsylvania or east thereof) is..... 1282.10 miles.

(*b.*) The total length of lines or routes over which this company transports merchandise, freight or express matter, as agent of the American Express Company, in the manner above set forth is..... 4373.88 miles.

(*c.*) The total length of said last mentioned lines or routes as are outside of the State of Indiana, is..... 3959.18 miles.

c. Total length of said last mentioned lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.	Counties. *	Miles.	Hdths.
Adams	16	76	Montgomery	15	90
Allen	28	21	Parke		38
Clinton	23	26	Porter	32	25
Elkhart	5	34	St. Joseph	30	72
Fountain	25	12	Starke	15	04
Grant	25	69	Tippecanoe	6	65
Huntington	8	10	Vermilion	6	85
Howard	26	74	Wells	15	75
Kosciusko	20	30	Whitley	18	38
Lake	34	56			
Laporte	36	17		414	70
Marshall	22	53			

* Townships.

STATE OF NEW YORK, }
County of New York, } *ss:*

J. W. Huitt, * gen'l manager of the National Express Company, being duly sworn on oath say- that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

J. W. HUITT,
Gen'l Manager.

Subscribed and sworn to before me, this 29th day of May, 1900.
THOS. J. KENNEDY,
Notary Public, 88, *New York County.*

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* This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of National Express Company. April 1, 1— Filed June 1, 1900. W. H. Hart, auditor of State.

358 *Stipulation.*

It is hereby stipulated by the parties complainant and defendant that the following facts are admitted as true, and shall be taken as fully and completely as though formal proof thereof were offered herein namely:

That the complainant in cause number 9620, James C. Fargo, was at the date of the filing of the original bill herein, on August 24th, 1898, and has continuously since been and now is a resident citizen of the State of New York, and was and has continuously since been and now is one of the shareholders owning and holding more than fifty interests or shares in the American Express Company mentioned in said bill; and that he was on said August 24th, 1898, and continuously from that time down to the present time has been, and now is, the president of said American Express Company.

That the complainant in cause number 9621, Johnston Livingston, was at the date of the filing of the original bill herein, on August 24th, 1898, and has continuously since been and now is a resident citizen of the State of New York, and was and has continuously since been and now is one of the shareholders owning and

359 holding more than fifty interests or shares in the National Express Company mentioned in said bill; and that he was on said August 24th, 1898, and continuously from that time down to the present time has been, and now is, the president of said National Express Company.

That the State board of tax commissioners of the State of Indiana met in annual session pursuant to the statute in that behalf, and

adjourned pursuant to said statute, in the years 1898, 1899 and 1900, upon the dates following, that is to say:

In the year 1898 the said board convened on July 11, 1898 and adjourned *sine die* on August 26, 1898.

In the year 1899 the said board convened on July 10, 1899 and adjourned *sine die* on August 31, 1898.

In the year 1900 the said board convened on July 9, 1900 and adjourned *sine die* on August 23, 1900.

That during each of said annual sessions the then auditor of State laid before said State board of tax commissioners pursuant to the statute in that behalf, the respective annual returns filed in said State auditor's office by each of the several express companies having routes in the State of Indiana in each of said years.

360 That at no time was any demand or request made by the auditor of State or any member of the Indiana State board of tax commissioners upon either the American Express Company or the National Express Company for a further showing of facts than was made by each of said companies in each of the annual returns of the said companies, respectively, for the said years 1898, 1899 and 1900, except only as appears in the requests made by members of said State board of tax commissioners and their attorneys while they were in annual session as will more fully appear in the minutes of said State board of tax commissioners in evidence in this cause.

That the American Express Company and the National Express Company have each paid to the proper county, city, town and township treasurers, and other local officers entitled to receive the same, or the same has been tendered and refused, the full amount of taxes assessed and levied upon the tangible property of said two express companies respectively in said years 1898, 1899 and 1900, except as to the last half of the taxes for said year 1900 which are payable at any time on or before the first Monday in November, 1901.

361 That the aggregate amount of the taxes collectible from the said American Express Company and the said National Express Company respectively, upon the assessment and valuation of the so-called mileage property of said two express companies in the State of Indiana made by the State board of tax commissioners of the said State of Indiana in each of said years 1898, 1899 and 1900 in accordance with the aggregate levy in their several jurisdictions by said county, city, town and township treasurers as aforesaid, was in fact larger than the amount of said taxes so collectible as averred in the original and supplemental bills in each of said causes; and the aggregate amount of the taxes so collectible upon the excess of valuation of the said mileage property of each of the said two express companies in each of said years 1898, 1899 and 1900 made by said State board of tax commissioners was in excess of $2,000 in each of said years, as averred in said original bill and said supplemental bill in each of said causes.

That the lowest rate of levy in each of said years 1898, 1899 and 1900 in any of the counties, cities and towns in which either said

American Express Company or said National Express Company had in said years a route or line was $1.50 on each one hundred dollars, and the highest such levy was $3.00 on each one hundred dollars.

362 That no officer, agent, attorney, or employé of the American Express Company, or of the National Express Company was present when Mr. R. A. Wells made his statement to the Indiana State board of tax commissioners on the twenty-sixth day of August, 1898, as set out in this evidence, and that no such officer, agent, attorney or employé of said American Express Company, or of said National Express Company had any knowledge of the statements made by said R. A. Wells until after the final adjournment of said State board of tax commissioners in said year 1898.

It is further stipulated that for the purpose of shortening the record in these causes, namely, numbers 9620 and 9621, the annual returns made by the several express companies having routes or lines in Indiana for the years 1898, 1899 and 1900 (other than the annual returns of the American Express Company and the National Express Company for those years, which are in evidence in this cause) make the following statements as matters of fact as here summarized; that is to say:

363 Adams Express Company.

Annual Return for 1898.

Item 1. Total capital stock: It has no capital stock.
Item 2. Number of shares issued and outstanding: 120,000 shares.

(*a.*) Par or face value of each share: None. All shares are equal in value.

Item 3. Principal place of business: New York city.
Item 4. Market value of shares of stock on first day of April, 1899: $100.00.
Item 5. Total personal property and real estate in the State of Indiana: $26,979.
Item 6. Total real estate outside of Indiana. (Blank.)
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: (Blank.)
Item 8. Total lines or routes: 29,940 miles.
Total lines or routes outside of Indiana: 28,283 miles.
Total lines or routes within Indiana: 1,657.46/100 miles.

364 Adams Express Company.

Annual Return for 1899.

Item 1. Total capital stock: It has no capital stock.
Item 2. Number of shares issued and outstanding: 120,000 shares.

(*a.*) Par or face value of each share: None; all shares are equal in value.

Item 3. Principal place of business: New York city.
Item 4. Market value of shares of stock on first day of April 1899: $100.00.
Item 5. Total personal property and real estate in the State of Indiana: $26,675.
Item 6. Real estate outside of Indiana: (Blank)
Item 7. Mortgages upon the whole or any part of its property or bonded indebtedness: (Blank.)
Item 8. Total lines or routes: 29,845 miles.
Total lines or routes outside of Indiana: 28,175 miles.
Total lines or routes within Indiana: 1,669.70/100 miles

365 Adams Express Company.

Annual Return for 1900.

Item 1. Total capital stock: It has no capital stock.
Item 2. Number of shares issued and outstanding: 120,000 shares.

(*a.*) Par or face value of each share: None. All shares are equal in value.

Item 3. Principal place of business: New York city.
Item 4. Market value of shares of stock on first day of April 1900, $100.00.
Item 5. Total personal property and real estate in the State of Indiana: $24,123.
Item 6. Real estate outside of Indiana: (Blank.)
Item 7. Mortgages upon the whole or any part of its property or bonded indebtedness: (Blank.)
Item 8. Total lines or routes, 29,468 miles.
Total lines or routes outside of Indiana, 27,830.33 miles.
Total lines or routes within Indiana, 1,637.67 miles

366 The Pacific Express Company.

Annual Return for 1898.

Item 1. Total capital stock: $6,000,000.00.
Item 2. Number of shares issued and outstanding: 60,000 shares.

(a.) Par or face value of each share: $100.

Item 3. Principal place of business: Omaha, Nebraska.
Item 4. Market value of shares of stock on first day of April, 1898: None.
Actual value thereof on the first day of April 1898: $10.00.
Item 5. Total personal property and real estate in the State of Indiana: None.
Item 6. Total real estate outside of Indiana: None.
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: None.
Item 8. Total lines or routes: 20,304 miles.
Total lines or routes outside of Indiana: 19,878 miles.
Total lines or routes within Indiana: 425 91/100 miles.

367 The Pacific Express Company.

Annual Return for 1899.

Item 1. Total capital stock: $6,000,000.00.
Item 2. Number of shares of capital stock issued and outstanding: 60,000 shares.

(a,) Par or face value of each share: $100.00.

Item 3. Principal place of business: Omaha, Nebraska.
Item 4. Market value of shares of stock on the first day of April, 1899: None.

(a.) If shares have no market value state actual value thereof: Estimated $30. No sale.

Item 5. Total personal property and real estate in the State of Indiana: None.
Item 6. Total real estate outside of Indiana: None.
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: None.
Item 8. Total lines or routes, 20,259 miles.
Total lines or routes outside of Indiana: 19,833 miles.
Total lines or routes within Indiana: 425 91/100 miles.

368 The Pacific Express Company.

Annual Return for 1900.

Item 1. Total capital stock: $6,000,000.00.
Item 2. Number of shares of capital stock issued and outstanding: 60,000 shares.

(*a*.) Par or face value of each share: $100.

Item 3. Principal place of business: St. Louis, Mo.
Item 4. Market value of shares of stock on the first day of April, 1900: None.

(*a*.) If there is no market value, then state actual value thereof: Estimates value $30.00; no sales.

Item 5. Total personal property and real estate in the State of Indiana: None.
Item 6. Total real estate outside of Indiana: None.
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: None.
Item 8. Total lines or routes, 18,370 miles.
Total lines or routes outside of Indiana: 17,945 miles.
Total lines or routes within Indiana: 425.91 miles.

369 Southern Express Company.

Annual Return for 1898.

Item 1. Total capital stock: None.
Item 2. Number of shares of capital stock issued and outstanding: 60,000 shares of interest; not stock.

(*a*.) Par or face value of each share: No par value.

Item 3. Principal place of business: Augusta, Georgia; chartered in Georgia with headquarters at Augusta; accounting department and general offices at Chattanooga, Tennessee.
Item 4. Market value of shares of stock on the first day of April, 1898: No known market value of shares.

(*a*.) If shares have no market value then state the actual value thereof: $500,000.00.

Item 5. Total personal property and real estate in the State of Indiana: $1600.00.
Item 6. Total real estate outside of Indiana: $215,650. This is not included in the $500,000 assets.
Item 7. Mortgages upon the whole or any part of its property or bonded indebtedness: (Blank.)
Item 8. Total lines or routes, 24,531 miles.
Total lines or routes outside of Indiana, 24,521 miles.
Total lines or routes within Indiana: 10 miles.

(Engrossed on the return:) "The only line the Southern
370 Express Company operates into or within the State of Indiana is between Henderson, Kentucky, and Evansville, Indiana, on the Louisville & Nashville railroad.

The Southern Express Company uses the same car, on the same train, on the same track, as the Adams Express Company, and the matter is in charge of the same messenger.

The Southern Express Company could turn its business over to the Adams Express Company at Henderson, Kentucky, and cease to operate the above mileage.

It is assumed that the Adams Express Company have already paid for the said mileage in Indiana.

The business of the Southern Express Company in the State is entirely inter-state. We do no intra-state business at all.

Our gross earnings for one year for the State alone we figure at $1,620.00.

(There was no annual return filed by the Southern Express Company for the years 1899 or 1900.)

371 United States Express Company.

Annual Return for 1898.

Item 1. Total number of interests: $10,000,000.
Item 2. Number of interests issued and outstanding: 100,000 shares.

(*a.*) Par or face value of each interest: $100.

Item 3. Principal place of business: 49 Broadway, New York city.
Item 4. Market value of each interest on the first day of April, 1898: $40.00.
Item 5. Total personal property and real estate in the State of Indiana: $10,972.86.
Item 6. Total real estate outside of Indiana: $43,500.00
Item 7. Mortgages upon the whole or any part of its property or bonded indebtedness: None.
Item 8. Total lines or routes: 151,580.91 miles
Total lines or routes outside of Indiana: 149,921.66 miles.
Total lines or routes within Indiana, 1,659.25 miles.

(Attached to and made a part of the return was the following statement:)

"This company is the owner of a large amount of tangible property which constituted no part of its plant, for the transaction of the express business, and is not used in said business, and all of
372 which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Illinois and other States, and the personal property is, and for many years

has been, actually situated in the city of New York, where the company has its principal office, and where the said property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situated outside of the State of Indiana which was owned by the company on the first day of April, 1898, and which is not, and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to uses having no relation whatever to the express business, the same being held by the company as investments and constituting no part of its express plant. The market value of said real estate on April 1, 1898, was not less than $44,699.98/100.

On the first day of April, 1898, this company owned investments in securities which were not, and never had been, within the State of Indiana, but they were kept, and always had been kept, by the company, so long as it had owned the same, in the city of New
373 York, where its principal office is situated. No part of said investments was used by the company on the first day of April 1898, or during the year then ending, in its express business, and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgages upon real estate, and moneys loaned on collateral, which were on the first day of April, 1898, of the market value of $968,317.23.

All of said stocks, bonds, mortgages and other personal securities or evidences of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by any authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first day of April, 1898, this company owned, in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection
374 with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, and other States, and was, on that day, of the market value of not less than $981,620.79.

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1898 this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses, wagons, harnesses, safes, supplies, &c., of the value of $975,381. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in

the various jurisdictions in which the same were situated. That of said amount of $975,381, not less than $11,000 in value was situated in the State of Indiana.

As appears from this return and the foregoing statements herein contained, the United States Express Company on the first day of April, 1898, was the owner and in possession of actual, tangible property situate outside of the State of Indiana of a market value of $2,959,019, and it claims that the State board of tax commissioners of Indiana, under the act of March 6th, 1893,
375 under which this report is made, before apportioning the market value of the aggregate interests of the associates, must deduct therefrom the actual value of all real estate belonging to said company situated outside of the State of Indiana, and the market value of all the tangible, personal property belonging to said company, and situated outside of said State.

This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of the Adams Express Company against the Ohio State auditor (165 U. S., 194), and upon the opinion of Mr. Justice Brewer in the case of the Adams Express Company against the Ohio State auditor (166 U. S., 185) these cases having been followed by the Supreme Court in the case of the United States Express Company against Indiana (165 U. S., 255).

(Signed) THEO. F. WOOD.

Sworn to before me this 31st day of May, 1898.

CHARLES E. JEFFRIES,

[SEAL.] *Notary Public, Kings County.*

Certificate filed in New York.

376 United States Express Company.

Annual Return for 1899.

Item 1. Total number of interests amount to $10,000,000.
Item 2. No. of interests issued and outstanding: 10,000.

(*a.*) Nominal value of each interest: $100.

Item 3. Principal place of business: 49 Broadway, New York city.
Item 4. Market value of interests on the first day of April, 1899: 45.
Item 5. Total personal property and real estate in the State of Indiana: $10,889.
Item 6. Total real estate outside of Indiana: $61,448.33.
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: None.
Item 8. Total lines or routes: 151,516.59 miles.
Total lines or routes outside of Indiana, 149,994.92.
Total lines or routes within Indiana, 1,521.67.

377 United States Express Company.

Annual Return for 1900.

Item 1. Total of interests amount to $10,000,000.
Item 2. Number of interests issued and outstanding: 100,000.

(*a*.) Par or face value of each interest; $100.00.

Item 3. Principal place of business: 49 Broadway, New York city.
Item 4. Market value of interests on the first day of April, 1900: $4,500,000.
Item 5. Total personal property and real estate in the State of Indiana: $14,090.50.
Item 6. Total real estate outside of Indiana: $2,050,380.10.
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: None.
Item 8. Total lines or routes:

Railroad, &c	34,054.50	
Additional ocean mileage	17,536	
		151,590.59
Total lines or routes outside of Indiana		150,045.79
Total lines or routes within Indiana		1,544.80

378 Wells Fargo and Company.

Annual Return for 1898.

Item 1. Total capital stock: $8,000,000.00.
Item 2. Number of shares of capital stock issued and outstanding: 80,000 shares.

(*a*.) Par or face value of each share: $100.00.

Item 3. Principal place of business: San Francisco, California.
Item 4. Market value of shares on the first day of April, 1898: $115.00.
Item 5. Total personal property and real estate in the State of Indiana: $650.00.
Item 6. Total real estate outside of Indiana: (Blank.)
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: (Blank.)
Item 8. Total lines or routes: 159.76 miles.
Total lines or routes outside of Indiana: (Blank.)
Total lines or routes within Indiana: 159.76 miles.

379 Wells Fargo and Company.

Annual Return for 1899.

Item 1. Total capital stock: $8,000,000.00.
Item 2. Number of shares of capital stock issued and outstanding: 80,000 shares.

(*a.*) Par or face value of each share: $100.00.

Item 3. Principal place of business: San Francisco, California.
Item 4. Market value of shares on the first day of April, 1899: $125.00.
Item 5. Total personal property and real estate in the State of Indiana: $670.00.
Item 6. Total real estate outside of Indiana: (Blank.)
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: (Blank.)
Item 8. Total lines or routes: 159.76 miles.
Total lines or routes outside of Indiana: Blank.
Total lines or routes within Indiana: 159.76 miles.

380 Wells Fargo and Company.

Annual Return for 1900.

Item 1. Total capital stock: $8,000,000.00
Item 2. Number of shares of capital stock issued and outstanding: 80,000 shares.

(*a.*) Par or face value of each share: $100.00.

Item 3. Principal place of business: San Francisco, California.
Item 4. Market value of shares on the first day of April, 1900: $125.00;
Item 5. Total personal property and real estate in the State of Indiana: $675.00.
Item 6. Total real estate outside of Indiana: (Blank.)
Item 7. Mortgages upon the whole or any part of its property, and bonded indebtedness: (Blank.)
Item 8. Total lines or routes: 159.76 miles.
Total lines or roytes outside of Indiana, blank.
Total lines or routes within Indiana, 159.76 miles.

381 The Southern Indiana Express Company.

Annual Return for 1899.

Item 1. Total capital stock authorized: $10,000.
Item 2. Number of shares of capital stock issued and outstanding: 10 shares.

(*a.*) Par or face value of each share: $100.00.

Item 3. Principal place of business: Bedford, Indiana.
Item 4. Market value of shares of stock on the first day of April, 1899: None.

(a.) If shares have no market value then state actual value thereof: None.

Item 5. Total personal property and real estate in the State of Indiana: (Blank.)
Item 6. Total real estate outside of Indiana: None.
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: None.
Item 8. Total lines or routes: 106.12 miles.
Total lines or routes outside of Indiana. Blank.
Total lines or routes within Indiana, 106.12 miles.

(Endorsed on the face of the return was the following statement:) "The company carries on an express business over the Southern Indiana Railway Company's railway line, and by reason of conditions it has been unable to change it can only do a local business on that line of road. The gross amount of its revenues since it commenced business July first, 1898 to May first, 1899 was $2000.00 and more than that sum has been expended in carrying on its operation."

382 The Southern Indiana Express Company.

Annual Return for 1900.

Item 1. Total capital stock authorized: $10,000.
Item 2. Number of shares of capital stock issued and outstanding: 10 shares.

(a.) Par or face value of each share: $100.00.

Item 3. Principal place of business: Bedford, Indiana.
Item 4. Market value of shares of stock on the first day of April, 1900: $ No.

(a.) If shares have no market value, then state actual value thereof: None.

Item 5. Total personal property and real estate in the State of Indiana: (Blank.)
Item 6. Total real estate outside of Indiana: (Blank.)
Item 7. Mortgages upon the whole or any part of its property and bonded indebtedness: (Blank.)
Item 8. Total lines or routes: (Blank.)
Total lines or routes outside of Indiana, (blank.)
Total lines or routes within Indiana, 112.37 miles.

(Endorsed on the face of the return was the following statement:)
"The company carries on an express business over the
383 Southern Indiana Railway Company's railway alone, and only does a local business on that line of railroad, and be-

cause of discriminations against it by other express companies operating over connecting lines of railroad, it cannot have its packages received and carried in the usual way to points off the Southern Indiana railway. This 'boycott' has continued ever since it was organized. The gross amount of its receipts for the last year was $2790, and it has expended $4747 in carrying on its business during that year."

384 UNITED STATES OF AMERICA, *District of Indiana.*

In the Circuit Court of the United States for the District of Indiana.

JAMES C. FARGO, as President of the American Express Company,
vs.
WILLIAM H. HART, Auditor of State for the State of Indiana.
No. 9620. Chancery.

REPORT OF EXAMINER, VOL. II.

Defendant's Evidence.

Office of the American Express Company, 65 Broadway, New York city, N. Y.

FRIDAY, *October* 25, 1901.

The parties met, present the complainant, by Lewis Cass Ledyard, Esq., his attorney, and Francis F. Flagg, Esq., vice-president and general manager; the defendant, by Merrill Moores, assistant attorney general; and the special examiner.

385 LEWIS CASS LEDYARD, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by MERRILL MOORES, Esq.:

1 Q. Your name is Lewis Cass Ledyard and you are a New York lawyer?
A. Yes sir.
2 Q. And a director of the American Express Company?
A. Yes sir.
3 Q. How long have you been a director of the American Express Company?
A. Nine or ten years.
4 Q. Continuously?
A. I should think nine or ten years; I was counsel for them before that.

5 Q. You are also a director of the Boston and Maine railroad and of the Merchants Dispatch Transportation Company, are you not?

A. Yes.

6 Q. How long have you been a director of the Boston and Maine?

386 A. I think since the year 1893.

7 Q. Mr. Pratt and Mr. Whitney who are directors of the American Express Company are also directors of the Boston and Maine, are they not?

A. They are now.

8 Q. Have they been directors since the time you were a director of the company?

A. No sir.

9 Q. How long have they been directors of the Boston and Maine?

A. Mr. Pratt for a very short time; Mr. Whitney was a director of the Boston and Maine long before he was a director of the American Express Company.

10 Q. Have there been any coincidences since 1893 to your knowledge other than the three that I have named in directors of the two companies?

A. I will say shortly, when the American Express Company bought its stock in the Boston and Maine directory I went into the Boston and Maine road to represent the American Express Company's holdings. I was the only one who did.

11 Q. You were the only one who did at that time?

A. The only one; and the only person in the railroad board that represented those interests.

387 12 Q. The amount of stock purchased at that time,—purchased April 25th, 1895, was approximately the three millions and a half that the American Express Company still owns, was it not?

A. No sir, I do not now recollect the exact amount of the purchase of Boston and Maine stock in 1893, but it was very considerably less than the amount now held by the American Express Company in the Boston and Maine railroad. My recollection is that the first purchase was in the neighborhood of only ten thousand shares. I think some time after that we bought 5,000 shares more, which made our holdings fifteen thousand shares.

13 Q. And you now hold nearly twenty-one thousand?

A. We at various times since then have purchased additional shares of stock in the Boston and Maine railroad and we have now I think thirty thousand shares, but not at the date of the report to your State board under examination in this case.

14 Q. Well, very shortly after your original purchase you bought two thousand shares of stock in the Bangor and Aroostock, which was a part of the Boston and Maine system, was it not?

A. No sir, it had no relation whatever with it and has
388 not today. Never has had.

15 Q. Prior to the purchase of this stock and your election

as a director in the Boston and Maine road, is it not a fact that a large number of express companies were doing business over the Boston and Maine road?

A. No sir, unless you refer to what are called local expresses. The American Express Company has for a great many years past had an exclusive contract for the express business on the Boston and Maine railroad. That contract has from time to time expired and been renewed, as all railroad contracts with express companies are generally made for a period of five, ten or fifteen years, and at the period of their expirations are renewed. So it was with the Boston and Maine railroad, and while I have not myself been an officer of the company so long or been connected with it, I believe the American Express Company has been in the occupancy of the Boston and Maine Railroad Company for express business ever since the Boston and Maine railroad has been in existence. There is in New England an institution known as local expresses, local express men, individuals, who carry on a little local express business, between, for instance Boston and Cambridge or Boston and some other
389 suburban town. On all the railroads in New England where one of the principal express companies may have an exclusive contract for the express business on the railroad, their occupancy is always subject to the existence of these little local express men. Except in that sense the Boston and Maine railroad has never so far as I know had anything except the American Express Company to do its express business.

16 Q. Is it not a fact that the Boston and Maine also had a contract with Jackson's express?

A. That was one of the local expresses I referred to. That was a small partnership.

17 Q. And that all of the express companies local or otherwise beyond the Massachusetts State line, except Jackson's express, were refused the privilege of renewing contracts after your purchase?

A. On the contrary, sir, those local express companies are protected by legislation in Massachusetts, and there are just as many of them there on the Boston and Maine railroad, I believe, as there were before we bought a share of its stock.

18 Q. Is it not a fact that the Merchant's Cooperative Express Company had a contract with the Boston and Maine road
390 prior to 1893, and that after the purchase of that stock, legislation was had in the State of Massachusetts by the act of chapter 469 of the Acts of 1894, by which the railroads were forbidden to refuse contracts with the existing express companies and that the Boston and Maine road having refused to renew its contract with the Merchant's Cooperative Express Company, that latter company went before the railroad commissioners and procured an order requiring the Boston and Maine Company to continue its contract with them.

A. Your question involves some things that are true, some that are not and concerning which you have been misinformed, evidently; and some deductions by way of inferences that are not warranted.

I can not either way answer it categorically, but I am quite willing to tell you all I know about the subject. As I have told you already these local expresses—this local express business, is indigenous to New England, and ever since the express business has existed there has been in New England this big institution of the local expresses. A local express man is an individual who puts his stuff in the baggage car without a messenger accompanying it, sends it to the
391 point of destination, generally a short distance, and there takes it off the train and distributes it. There has been very strong feeling in Massachusetts that those people should be protected in their business and as the great express companies have grown up, they found that the existence of these small companies was not a menace to them, not a danger to them, but an annoyance. The railroads have always been anxious to have their business transacted by a single company. Naturally, because it led to a greater harmony of operation. The legislation which you refer to arose not in connection with the Boston and Maine railroad nor out of anything connected with that road. It was procured at the instance not of the railroad companies, nor of any of the large express companies, but at the instance of the local express men in Massachusetts. They were represented by Mr. Pillsbury, then or since then the attorney general in Massachusetts, and the Old Colony Railroad Company with which either the Adams Express or the New York and Boston Despatch had undertaken to contract,—with one or two of those railroad companies—for the exclusive express service on their lines, and then the Old Colony Company had undertaken to exclude these small local express men.
392 That led to their applying to the legislature for legislation to protect their interests, and the act that you refer to was passed by the legislature in pursuance of that demand. It was principally the result of an agreement between the representatives of the local express men; between chiefly Mr. Pillsbury and the representatives of the larger express companies. It provided in substance that existing local express men should be protected in their business notwithstanding any exclusive contract that the railroad company might make, and that the introduction of further local expresses should be subject to the discretion of the railroad commissioners upon a hearing. I am speaking from recollection, but I think that is the substance of the act you inquire about. I answer thus at length in order to show you that nothing that occurred on the Boston and Maine railroad was the cause of that legislation, and so far as this Merchants Cooperative Express Company is concerned I am unable to answer you positively. My recollection is that after that legislation had been procured by the local express men an association of some such name as that was organized in Lawrence, Massachusetts, and they attempted to run a local express. They were not
393 existing express men protected by the act, but they were persons who had no right to run upon any railroad having an exclusive contract with a general express company, except by the permission of the railroad commissioners upon a hearing and my

recollection is that the instance you refer to was a hearing before the railroad commissioner as to whether that association was a new local express company and whether it should be permitted to engaged in the business. I can not vouch for that accurately, but that is my best recollection. There has not been a local express man to my knowledge excluded from the Boston and Maine railroad since the legislation which you mentioned or since the purchase by the American Express Company of any stock in the Boston and Maine Railroad Company. My impression is there are just as many today as there were then.

19 Q. Did you say that you had an exclusive contract with the Boston and Maine railroad prior to the purchase of your stock?

A. Ever since the Boston and Maine railroad existed the American Express Company or its pred-cessors have had an exclusive contract with the Boston and Maine railroad; certainly for many years prior to the purchase of that stock.

394 20 Q. Is it not a fact that your company pays a percentage of its receipts for the privilege of sending express matter over the Boston and Maine and has its messengers carried free, whereas the local expresses that use that road have to pay by the hundred pounds and have to pay for their messengers, if they send them?

A. The facts stated in your question are true. Local expressmen have always paid by the hundred pounds in Massachusetts or by some weight measure and the large express companies which have exclusive contracts with railroads pay, I should think, in ninety-nine cases out of a hundred a large percentage of their gross receipts; but in addition to that in ninety-nine cases out of a hundred, and in the case of the Boston and Maine, the large express company,—here the American,—guarantees to the railroad company that such percentage shall amount annually to a fixed sum.

21 Q. Were you present in Boston, October 10th, 1894, at a stockholders' meeting of the Boston and Maine road at which the United States Express Company made an offer to the stockholders for an exclusive contract over the Boston and Maine, and if so, can you tell in a general way the terms of that offer?

A. I do not recollect such an occurrence, but I do recollect
395 some offer or suggestion made to the board of directors by the United States Express Company at about that time.

22 Q. Now under the terms of that offer did not the United States Express Company propose to give to the Boston and Maine for an exclusive contract a guaranty of two hundred and fifty thousand dollars more than the American Express Company was paying, backed up by a one hundred thousand dollar bond, that it would carry out its contract?

A. I think not. I have not recollection of anything of that sort.

23 Q. What is your recollection as to the offer made?

Mr. LEDYARD: I object to all these questions as irrelevant and immaterial.

A. My recollection is that the United — Express Company made an offer. Mr. Moores, since you have said something to me outside of the record it revives my recollection, but not very distinctly, that some stockholder brought up in the stockholders' meeting about that time some question as to why the offer of the United States Express Company had not been accepted. I think he was a stockholder, holding five or six shares of stock, some nomi-
396 nal amount of stock; there was a very large amount of stock present, a majority of the entire capital stock of the road, and the president stated why the offer of the United States Express Company had not been accepted from the chair and no other person than this holder of this nominal amount of stock raised any further question about it. You asked me what the offer was. My recollection now is that it was forty per cent., that is, that the United States Express Company offered to pay to the Boston and Maine railroad forty per cent. of its gross receipts. That was more than the amount which the American Express Company was paying. Whether the guarantee with that offer was as large as that that the American Express Company was paying, I do not remember, but I do remember that the president explained to the satisfaction of all of the stockholders, excepting this fellow with a few shares, the reasons which had induced the board to renew the contract with the American Express Company. I will state those reasons if you wish.

24 Q. No, I don't care for them. You have a perfect right to state them if you want to.

A. It was the opinion of the board, so the president stated, that the United States Express Company could not give their road
397 anything like the business that the American Express Company could. The United States Express Company had no connections with the Boston and Maine railroad.

25 Q. You have no recollection as to whether or not the guarantee was larger than your own guarantee?

A. Nor even whether they offered a guarantee. I have no recollection about that. I may account for that lack of knowledge or recollection about it, from the fact that when I became a director of the Boston and Maine railroad to represent the stock which the American Express Company had purchased in that road, I stated to the board of directors that if any questions should ever arise between the express company and the Boston and Maine railroad, I should refuse to take part in them or to discuss them; that we had not bought our stock for the purpose of grinding any axes, but as an investment, and that the purchase had nothing to do with our express business, and that I being a representative of both companies, would certainly have nothing to say whatever about any questions that might arise between the companies, and I trusted my associates of the board would allow those matters to be determined between the American Express officers and the railroad company. When the
398 American Express Company's contract was made with the Boston and Maine railroad,—the one that was made subsequent to our purchase of the stock,—when the contract was renewed and we

paid a higher rate than we had before, I never saw that contract and I never knew its terms, until after its adoption by the board of directors, of the Boston and Maine railroad. When the subject came up I retired from the executive committee where it was considered, stating to my associates that I did not care to know anything about it. When the matter came before the board of directors upon the report of the executive committee I did the same.

26 Q. Well, the offer of the United States Express Company was unanimously rejected, you understand?

A. It was unanimously rejected by the board I was told. I remember only one thing that I did hear of it. I remember that Mr. Hart, who was at that time a member of the executive committee and of the board and who had been formerly president of the New England Railroad Company, told me after this was over that the offer had been received from the United States Express Company, that it had been laid before the executive committee and that he had taken strong ground against it, and said that he would
399 not take the United States Express Company on any terms, owing to the former experience which he had with them. But I only know that from what Mr. Hart told me.

27 Q. You have as a business man knowledge of the express business outside of your knowledge as a lawyer for the company, have you?

A. I have not only been counsel for the company, but I have been director and member of the executive committee of the American Express Company for some nine or ten years. I am also vice president of the National Express Company and have been for a number of years. I have such knowledge as I have gained in those capacities.

28 Q. You and Mr. Fargo are both directors of the Merchants Despatch Transportation Company and Mr. Fargo is secretary and treasurer of that company?

A. Yes.

29 Q. And Mr. Fargo is a director of the Chicago and Northwestern?

A. I believe he has been for many years, and I have been a director for a number of years of other companies, some of which the American Express Company has no relation with.
400 30 Q. Well, you are on the Maine Central, but you are not on the Michigan Central?

A. No, but my brother is president of it.

Cross-examination.

Questions by Mr. LEDYARD:

31 X Q. What considerations are fairly to be taken into account in ascertaining the proportion of gross earnings of an express company upon a given line of railroad, which it can fairly pay to the railroad company as compensation for the privilege of doing ex-

press business on its line and still leave a reasonable margin for profit?

A. Contracts between express companies and the railroad companies have during a series of years been becoming more and more uniformly contracts upon a percentage basis accompanied by a guarantee on the part of the express company of a minimum annual or other payment. The principal expense of conducting an express business is in its terminal charges, by which I mean the cost of collecting, handling and loading the goods at the place of departure and unloading, handling and delivering them at the point of
401 destination. Express rates are in general, or I may say universally regulated upon the basis of distance. Now it costs just as much to collect, handle and deliver on board the cars express matter which is only going twenty miles as it does to do the same to express matter which — destined upon a journey of one hundred miles, and so with the expenses at the place of arrival,— the substantial cost being the same. The express company's charge for the service rated as it is by distance, is very much greater for the one hundred miles carriage, than it is for the twenty mile carriage. Now upon a railroad in a sparsely settled country, the bulk of the express business there which is long haul business, the express company can profitably pay to the railroad company a very much larger proportion of its receipts than it can in the case where the bulk of the business is composed of short hauls. The express business on the Boston and Maine road is very largely local in its character and the average haul upon express business is very much shorter than the average haul upon trunk lines, or upon the generality of western railroad lines, and no express company could afford to pay to the Boston and Maine railroad the same proportion
402 of its gross receipts for express business upon its road that it could afford to pay to a trunk line of railroad or to some western railroad running through a comparatively sparsely settled country, where the average haul is much longer.

32 X Q. Has the ownership by the American Express Company of Boston and Maine Railroad stock ever been used by the American Express Company to promote or further its interests in the express business upon that railroad *o*t to promote or further the procuring of any contract for the doing of such business?

A. Never.

33 X Q. I notice that Mr. Charles M. Pratt and Henry M. Whitney are directors both of the Boston and Maine railroad and of the American Express Company. Please stated how and when these gentlemen became directors of these two companies.

A. Mr. Henry M. Whitney became a director of the Boston and Maine railroad when the board was organized in 1893. He was then the president of the Metropolitan Steamship Company, a large transportation company running a line of steamers between New York and Boston and having important business relations and connections with the Boston and Maine railroad and carrying be-
403 tween New York and Boston a large quantity of freight originating on or destined to Boston and Maine rails. Mr.

Whitney had no interest in the American Express Company at that time and acquired no interest until several years later, when Mr. Cheney, the Boston director of the American Express Company died, and at my request Mr. Whitney, whom I had known through my association with him in the Boston and Maine railroad, acquired an interest in the American Express Company and became a director in it.

Mr. Charles M. Pratt is a member of the executive committee of the Standard Oil Company. He is trustee of a very large estate left by his father. At various times during several years past he has purchased as investments for the trusts of that estate, blocks of stock of the Boston and Main- railroad, and having become a large holder of the Boston and Maine stock, he was elected a director of that company. It is I think only within the present year that Mr. Pratt has become a director of the American Express Company in which he holds considerable interest. Probably the reason that he acquired that interest and that he became a director was that he was a personal client of my own.

404 The American Express Company has never had any representative in the directory of the Boston and Maine railroad of its interest as stockholder in that company except myself, unless you may consider that Mr. Whitney and Mr. Pratt having since become directors of the American Express Company and holding stock in the Boston and Maine Railroad Company in their own right may be deemed to be affiliated with the American Express Company. During all the period that I have been a director of the Boston and Maine railroad the board has been composed of some thirteen to fifteen members. Until recent vacancies caused by death, a majority of the board of directors of the Boston and Maine Railroad Company were persons who had been directors in that company prior to the purchase of the American Express Company of any stock in it.

34 X Q. You have been asked whether you and Mr. Fargo, president of the American Express Company, are directors of the Merchants' Despatch Transportation Company. Please state what that company is?

A. The Merchants Despatch Transportation Company is a voluntary, unincorporated association engaged in the business of manufacturing refrigerator and freight cars and of furnishing those cars to railroads for the transportation of freight over those
405 lines. They also act as soliciting agents of freight for other railroad companies and receive from the railroad companies compensation for furnishing cars. A minority of the stock, I think about one-fourth, is owned by the American Express Company; the balance of it by certain railroad companies, and I think a small amount by individuals. This company was organized thirty years ago and the American Express Company was one of the original participants in its organization, and in the purchase of its stock. It does not contribute in any way any business to the American Ex-

press Company, nor is it a competitor of that company, nor does it take business from it.

The stock held by the American Express Company in the Merchants Despatch Transportation Company and the stock of the Boston and Maine Railroad Company are held by it as investments in the same manner and for like purposes as stocks are held for investments by private individuals. In fact, the American Express Company may be said to be not only an express company, but an investment or investing company. It has a large amount of funds which are kept for permanent investment.

If I have not before made it plain, I will now say that at
406 the time the American Express Company first purchased any Boston and Maine stock it had an exclusive contract with the Boston and Maine Railroad Company. That contract was made many years ago and was from time to time modified, generally in the direction of higher payments by the express company. Within a year or two after the American Express Company purchased its first block of Boston and Maine stock that contract was again modified and this modification was also in the direction of a higher payment by the express company. That is the only change that has been made in that contract since we purchased the first block of Boston and Maine stock, with the possible exception that I think the contract that was made with them in 1894, provided in respect to the guaranty that we should be credited with the railroad's receipts from local express business, that our guaranty then covered the entire business and assured the road of so much from the entire business, as well that that we did as that done by the local express companies. I think since then that was modified so as to require us to pay the full amount of the guaranty without being credited with the receipts from local express business; so that since then the rail-
road company has received not only the amount received
407 from the American Express Company's business under the terms of its guarantee, but the earnings from the local express men in addition.

Re-examination.

Questions by Mr. MOORES:

35 R. Q. When you, in your cross-examination, speak of having had an exclusive contract with the Boston and Maine Railroad Company prior to the purchase of the stock in 1893, you mean an exclusive contract in the sense that none of the great express companies had a similar contract with that road, but you did not contemplate the local express companies?

A. I don't think you have put it exactly right. My recollection of the contract is that it ran as all these contracts do, as an exclusive contract in favor of the American Express Company, so far as the railroad company had lawful power to make it so. These local express companies in New England have always been recognized

as having rights that the railroads could not deprive them of,
408 even before the legislation of 1894 but the contract was exclusive prior to our purchasing the stock in the same sense that it has been exclusive since the purchase of the stock. In that particular it was not changed.

(Witness excused.)

409 FRANCIS F. FLAGG, recalled as a witness on behalf of the defendant, testified as follows:

Direct examination.

Questions by Mr. MOORES:

1 Q. Mr. Flagg, in your original examination in this case in answer to question thirty-four on page thirty-six, you say "We make use of the facilities afforded us by various railroad companies with whom we have contracts for space in cars over their lines, for which we pay certain fixed sums." Do you mean absolute fixed sums or percentages?

A. Both, some times we pay on the percentage basis, and some times on a weight basis.

2 Q. Mr. Flagg, what is the purpose of capital in the express business?

A. What do you mean by capital?

3 Q. The money that is invested.

A. In these securities which we are holding?

4 Q. No, what is the purpose of capital in the express business What is the nature of it? Why is capital necessary in the
410 organization of an express company and for what purposes?

A. For the purpose of holding real estate to be used in the express business; for the purpose of purchasing equipment; and for such other purposes as designated in the company's articles of association.

5 Q. The articles of association provide for a certain fixed sum which is to be kept in cash or readily available securities. What purpose was there in requiring cash or available securities to be retained to that amount by the company?

A. I shall have to answer that by saying that I do not know. These articles of association were made so many years before my connection with the company that I am not able to state.

6 Q. Isn't it a fact Mr. Flagg that since 1868, the business of the American Express Company has more than quadrupled?

A. No that is not true.

7 Q. To what extent has it increased?

A. Our business has increased I should say once and a half.

8 Q. Isn't your mileage nearly four times what it was in 1868? I mean United States and Canada mileage? I do not mean ocean mileage.

A. No, I should say that our mileage is perhaps twice as much.

Our mileage to the best of my recollection in 1868 was be-
411 tween eighteen and twenty thousand miles; at the present time it is between thirty eight and forty thousand railroad miles in the United States and Canada.

(Witness excused.)

At this point an adjournment is now taken until Friday, November 1, 1901, at the law library room of the United States circuit court, in Boston, Massachusetts.

412 BOSTON, MASSACHUSETTS,
FRIDAY, *November 1st*, 1901.

The parties met at the law library room of the United States circuit court, in the postoffice building, at Boston, at ten o'clock a. m.

Present: Lewis S. Dabney, Esq., of counsel for complainant; and Merrill Moores, assistant attorney general, of counsel for defendant, and George C. Drury, Esq., of counsel for defendant; and the special examiner.

It is agreed by and between the parties that chapter 469 of the acts of 1894, of the Public Statutes of the Commonwealth of Massachusetts, and the portion of the public statutes which is incorporated in them by reference, namely, section 128 of chapter 112, of the Public Statutes, may be copied in the record for the convenience of parties and the court, and used on the hearing with the same force and effect as if the official printed publication of them had been submitted. The sections referred to being as follows:

413 (Acts of 1894, chapter 469.)

An act relative to the transaction of express business within the Commonwealth upon railroad and steamboat lines.

SECTION 1. The provisions of section one hundred and eighty-eight of chapter one hundred and twelve of the Public Statutes shall apply to all persons and companies now engaged in only a local express business, for the forwarding of express matter between points within the Commonwealth, in the trains of any railroad corporation, and to persons or companies desiring to engage therein who may obtain the recommendation of the board of railroad commissioners therefor, and who may by written agreement assume to indemnify such corporation against all loss of and damage to any property carried by them on its trains. The recommendation of the railroad commissioners in each case shall be given only after notice to all parties interested and a hearing thereon, and having due regard among other considerations to what the public interests may require. Such corporation may contract with one or
414 more persons or companies for the express service over its line or system, subject to the rights of such persons or com-

panies as now are engaged in, or shall have obtained the recommendation aforesaid to conduct, such local express business thereon between points within the Commonwealth under the provisions of this act; and the terms, facilities and accommodations provided for such last mentioned persons or companies shall not be unreasonable or unequal, having regard to the amount and character of the service, and also to such reasonable regulation of said business as may be required for the public interest and the efficient operation of the railroad.

SECTION 2. Every such corporation shall sell to any express messenger or person conducting a local express business, as aforesaid, in its trains or cars within the Commonwealth, a season ticket for his personal transportation, at a price not exceeding that at which similar tickets are sold to passengers, upon receiving from him a release of all right, to whomsoever accruing, to damages or compensation for death or for any personal injury received by him while riding on such ticket.

415 SECTION 3. No railroad corporation shall be liable to any person for damages for personal injuries caused by acts or omissions of the persons or companies doing an express business over its lines, or of the agents or servants of such person or companies.

SECTION 4. The provisions of this act shall apply to the proprietors of steamboat lines within the Commonwealth, and to persons engaged or desiring to engage in the express business thereon.

SECTION 5. The supreme judicial and superior courts shall have power to enforce the provisions of this act by injunction, mandamus, or other suitable process.

SECTION 6. Nothing herein contained shall be construed to deprive any railroad corporation of any right which it now has, under its charter and the general law, to perform all the transportation of property upon its road.

SECTION 7. This act shall take effect upon its passage. (Approved June 14, 1894.)

416 SECTION 188. Every railroad corporation shall give to all persons or companies reasonable and equal terms, facilities, and accommodations for the transportation of themselves, their agents, and servants, and of any merchandise and other property upon its railroad, and for the use of its depot and other buildings and grounds; and, at any point where its railroad connects with another railroad, reasonable and equal terms and facilities of interchange.

417 THOMAS M. COGGSWELL, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. MOORES:

1 Q. State your name.
A. Thomas M. Cogswell.
2 Q. Where do you live, Mr. Coggswell?
A. I live in Lawrence, Massachusetts.
3 Q. What is your present occupation?
A. Express man.
4 Q. How long have you been in the express business?
A. Thirty years.
5 Q. In what capacity are you now employed?
A. Manager of the Merchants Cooperative Express Company.
6 Q. State whether or not you are also a director in that company?
A. No sir I am not a director.
7 Q. And as manager have you general charge of the entire business of the company?
A. Yes sir.
418 8 Q. In what previous employments in the express business?
A. I have been connected with the express company of Coggswell and Company and with the American Express Company.
9 Q. When and for how long were you in the employ of the American Express Company?
A. Well, directly and indirectly I should think seven or eight years. Directly and indirectly understand; I will explain that later if I am asked.
10 Q. And at what time?
A. Well I should say from 1885 to 1893. I can not remember exactly.
11 Q. What is the character of the business done by the Merchants Cooperative Express Company?
A. Well, I don't know as I exactly understand that question, Mr. Moores.
12 Q. What kind of business does the company do?
A. It does an express business, a carrying business. The same as all express business; a common carrier.
13 Q. Of freight?
A. Of freight.
14 Q. I would like to have an explanation of the kind of business you do.
A. Well, we do the business of carrying merchandise and
419 money between Boston and Lawrence.
15 Q. And also accept shipments for other points, do you?
A. Yes, we accept shipments for the south.

16 Q. During the time you were in the employ of the American Express Company where were you employed and in what capacity?

A. You understand I answered your question directly and indirectly for seven or eight years. I was employed part of the time by the American Express Company as messenger and part of the time as cashier.

17 Q. Where?

A. In Lawrence.

18 Q. How many years were you cashier?

A. I should say about three years. I haven't got that distinctly, but I should say about three years. May have been a little longer than that; may have been a little less. I can not remember.

19 Q. As cashier what knowledge had you of the business of the company at Lawrence and the books of the company?

A. Well, I had all the knowledge—the money all went through my hands, and way-bills and statements.

20 Q. The books were under your charge, were they?

A. Yes sir; of course, I was the cashier at that time and I was responsible.

21 Q. During the time that you were cashier what percent-
420 age of the American Express Company's business was sent collect?

A. Oh, I don't know, I should think——

Mr. DABNEY: I will object to that question as immaterial and incompetent.

A. (Continuing:) I should think the average of any express company's business in the way of collections was seven-eighths of it.

Mr. DABNEY: I object to the answer.

Mr. MOORES: As not responsive?

Mr. DABNEY: Yes.

22 Q. I will come to that question. What percentage of the American Express Company's business was sent collect and what portion of it prepaid?

A. That I should not want to answer.

23 Q. Well state approximately.

A. Well as I answered that question before, my experience in the express business for thirty years has been that I should say three-fourths to seven-eighths of the charges are collect; not prepaid, you understand; of the business that goes.

421 Mr. DABNEY: I object to that as immaterial, incompetent and not responsive to the question.

24 Q. Really, I want to know generally what that percentage is in the express business from your experience with that company; I want to know at this time what was the percentage with the American Express Company; then I will come to the other matter later; at the time you were in their employ I ask you what per-

centage of the American Express Company's business was sent collect, and you say in answer your experience is that the average of any express company's business in the way of collections was seven-eighths. That doesn't exactly answer my question, and these people on the other side are inclined to be technical.

A. It is pretty hard work for me to stand up here and swear to what happened ten years ago, or eight years ago, without having books and figures to see. The only way that I can answer that question is, I can say that my experience for thirty years in the express business is that by far the majority of the business is sent collect instead of prepaid.

25 Q. From your knowledge of the express business as done by the various companies by which you have been employed
422 what percentage of the express business is sent collect, and what percentage is sent prepaid?

Mr. DABNEY: I object to that as immaterial and incompetent.

A. I should say seven-eighths goes collect; that has been my experience.

26 Q. Would this proportion hold good as to the business done by the American Express Company while you were in their employ?

Mr. DABNEY: I object to that as leading.

27 Q. State whether the business of the American Express Company of which you had knowledge while you were in the employ of that company, was in any different proportion from the one you have stated?

A. No sir, I don't think it was.

Mr. DABNEY: Note an objection to that question please.

28 Q. If any large class of shippers consign express matter on a credit basis as to express charges, you may so state.

A. Why I want to understand you. I am to understand
423 that question to mean do express companies carry goods and charge the express charges to the people they come to?

29 Q. Yes.

A. Certainly express companies do; not to the shippers, you understand, but charge to the parties that they come to.

30 Q. My question was whether any large class of shippers consign express matter paying monthly or any other fixed time or in lump sum for each package as it is sent?

A. I have no doubt they do, yes sir.

Mr. DABNEY: Will you note an objection to that answer please?

31 Q. What has been your experience in Lawrence in that respect?

A. We have shippers in Lawrence that send off goods where they prepay them; it is charged to them and they settle once a month.

32 Q. Are these as a rule large shippers or small?

A. Well, they are considered the largest concerns in Lawrence.

33 Q. Manufacturers or merchants?

A. Manufacturers.

34 Q. And that was true of the American Express business
424 while you were in its employ?

A. Certainly.

35 Q. State whether or not while you were in the employ of the American Express Company any funds were left in your charge as cashier to meet current expenses and for incidental expenses of the American Express Company at Lawrence?

A. When I was cashier we had what we called a bank. That was an amount that was furnished the office.

36 Q. For what purposes was that money used?

A. That money was used the same as capital for any concern I suppose to do business on.

37 Q. How large is Lawrence?

A. They have got I suppose sixty thousand inhabitants. I think so.

38 Q. At that time how large was it?

A. Well, there might have been fifty thousand.

39 Q. What was your so-called bank at that time?

A. The amount?

40 Q. Yes.

A. When I took the office the amount was three hundred dollars.

41 Q. Which was kept constantly to your credit, do I un-
425 derstand?

A. Yes sir, afterwards it was increased; after I went there.

42 Q. To how much?

A. To eight hundred dollars.

43 Q. That was the amount of cash carried in the office at Lawrence?

A. We had what was called a bank for eight hundred dollars, used as a man would use eight hundred dollars in capital in any business.

44 Q. And as you say that was used as a man would use capital in any business?

A. Why yes, I suppose so.

45 Q. State whether or not from your knowledge of the express business if money except such as is invested in equipments, horses, wagons, safes, furniture, books, blanks and such things as needed in the conduct and maintenance of the business?

Mr. DABNEY: I object to that question as incompetent and immaterial.

A. I should say that it was. In my experience we have always had to use more or less capital.

Mr. DABNEY: I object to the answer as incompetent.

426 46 Q. For what purposes other than these is capital needed in the management of express business?

A. Well, capital is needed in any express company. There is no express but what there is some charge accounts. Where the express charges are charged to them and settled once a month or whatever time they agree upon, there is no company, but needs some capital to meet that situation; that is if they pay their bills; I have always found it so in my experience.

47 Q. Well, you have said there are other uses?

A. Then there are losses. A man needs capital to pay for them. If a man has a horse dies, he has got to have money to buy another one. I don't know as I can say anything more.

48 Q. When was the Merchants Cooperative Express Company organized?

A. It was organized in 1894.

49 Q. Prior to that time you had been in business in Lawrence for many years?

A. Yes sir.

50 Q. Prior to that time state whether or not other express companies besides the American had been permitted to do business upon the Boston and Maine road?

A. Before that time?

427 51 Q. Before 1894.

Mr. DABNEY: Note an objection to that question as incompetent and immaterial.

A. Why yes, there were several expresses before that time, of course.

52 Q. What expresses that you know of?

A. Well, there was the concern of Coggswell and Company run from Lawrence to Boston; there was no other run to Lawrence except the American and the Cogswell Company, but there were other expresses on the Boston and Maine railroad, run to almost every town before that; yes before that.

53 —. Do you know as a matter of fact whether after 1893 the Boston and Maine refused to make contracts with other express companies than the American?

Mr. DABNEY: I object to that as incompetent and immaterial.

Mr. MOORES: I am just asking as to his knowledge now.

A. I know the Boston and Maine railroad objected to making contracts with other companies after 1893.

54 Q. What is the fact, did or did not the Boston and

428 Maine railroad refuse to make contracts with other express companies than the American after 1893?

Mr. DABNEY: I object to that question as incompetent and immaterial and as assuming that contracts were made with the American after 1893.

A. The Boston and Maine railroad did object to making contracts with other companies after 1893.

55 Q. Did it make such contracts after 1893? You say they objected to making them? Were such contracts made?

A. Not to my knowledge.

56 Q. Have you any knowledge of the road refusing to make such contracts with other express companies after 1893?

A. Yes sir, perhaps I answered that question wrong. I do not want to be misunderstood.

57 Q. Well explain, that is all right.

A. I don't hardly understand what you want to get at.

58 Q. We want the exact truth that is all. We want to know whether or not in your knowledge the Boston and Maine Railroad Company refused to make contracts with other express companies other than the American after 1893.

A. Of their own free will do you want me to understand?

59 Q. Yes of their own free will.

429 A. Well, then I say they did refuse to.

60 Q. Give briefly, if you can, a statement of whether there was any legislation upon this subject and the purpose of the legislation and its results?

Mr. DABNEY: I object to the question as incompetent and immaterial. It is not a proper way to prove legislation.

A. Why there was some legislation. I cannot tell just what it was now. There was legislation to the effect if I remember right that if the railroad afterwards would not grant a concern the privilege of doing express business that it could appeal to the railroad commissioners.

61 Q. After the legislation was passed state whether there were any refusals to afford express business to other companies along the line of that road?

A. Yes sir.

62 Q. To what companies that you know of?

A. It was refused to the company that I represent.

63 Q. And what did your company then do?

A. We applied for a hearing before the railroad commissioners.

64 Q. Was it granted?

430 A. It was granted, yes sir.

65 Q. And as the result of such hearing you got an order from the board of railroad commissioners?

Mr. DABNEY: I object to that as incompetent and not a competent method of proving matter, which is matter of record.

Mr. MOORES: I am not going to prove the matter of record. I am simply going to prove the steps which led up to it briefly by this witness.

A. We did.

66 Q. Your company applied to the railroad company for a contract, you say, which was refused, and you then asked for a hearing?

A. Yes sir.

67 Q. State whether since the hearing and order of the board of railroad commissioners your company has been accorded equal rights upon the Boston and Maine within the State of Massachusetts with other express companies have in doing business on that road?

Mr. DABNEY: I object to that question as incompetent and immaterial.

A. I don't think we have.

431 68 Q. What express company, if any, has a contract with the Boston and Maine road?

A. The American Express Company has a contract so far as I know.

Mr. DABNEY: I object to that answer because it appears that the witness has no knowledge on the subject.

69 Q. State whether or not the American Express Company does an express business over the Boston and Maine railroad?

A. Yes sir, they do.

70 Q. Now if your company isn't accorded equal privileges with the American Express Company, state in what respect your privileges differ from those granted to that company?

A. Well, our company pays by the hundred pounds a specified price. We pay for our messengers to ride over the road. The American Express Company have a contract on the railroad on a percentage price, as I have always been told,——

Mr. DABNEY: I object to the answer as hearsay.

71 Q. You pay by the hundred pounds?

A. Yes sir.

432 72 Q. State whether or not you pay for your messengers?

A. Yes sir we do.

73 Q. Full fare?

A. Well, we pay the regular season ticket fare.

74 Q. Precisely the same fare that other passengers pay who pay for season tickets?

A. Season tickets, yes sir.

75 Q. State whether or not express matter is carried on passenger trains?

A. Yes sir.

76 Q. It is?

A. Yes sir.

77 Q. As is the American?

A. Yes sir.

78 Q. How much a hundred do you pay for express matter?

A. We pay twenty-five cents a hundred pounds.

79 Q. And as to such matter as you send by freight you pay full freight rates do you?

A. That which we send on freight trains?

80 Q. Yes.

A. I pay the regular freight rates.

81 Q. Full freight rates?

A. Yes sir, full freight rates.

82 Q. State whether or not your express matter is sent on
433 all passenger trains on which you desire to send it, on which the American Express matter is carried?

A. Yes it is sent on all trains we desire to send it on.

83 Q. From your knowledge of the express business you may state whether or not better contracts can be made with express companies by railroads in which express companies own stock and are represented on the board of directors than can be made by express companies not owning stock of the railroad companies and not represented on the board of directors?

Mr. DABNEY: I object to that as incompetent and immaterial, and as relating to matters concerning which the witness is not shown to have any knowledge.

A. I can not say as to that.

84 Q. You have no knowledge as to whether better contracts can be made?

A. No sir I can not say as to that.

85 Q. If an express company owned a large interest in a railroad company and was represented on the railroad company's board of directors by three of the express company's directors and had a contract for the carrying of express matter upon a percentage
434 basis, which was also lower than the usual percentage provided in such contract, and had privileges accorded to no other express company by that railroad company, would it or would it not in your opinion be properly attributable to the control and influence obtained by the ownership of the stock and the representation on the board?

Mr. DABNEY: I object to that question as incompetent and as immaterial and as asking for opinions on a matter which is not properly a subject for an opinion of the witness; and that the witness is not shown to be competent to give an opinion on the subject.

A. I should say that that would have some influence.

86 Q. Would you regard the purchase, I am asking you as an express man, of railroad stocks and bonds where representation on a board of directors was accorded, as a proper investment of express capital for the purpose of gaining a better business for the express company?

Mr. DABNEY: I make the same objection to that question that I made to the last.

A. I don't see why it would not.

87 Q. For how many years have you had general charge
435 and management and knowledge of the affairs of an express company?

A. Well, I have had knowledge of the affairs of the express business for thirty years.

88 Q. And for how long have you had generaly charge of the affairs of the company?

A. Five years.

89 Q. State whether the express business is or is not like any other business in the matter of employés and payment of feed for horses and board and all that sort of thing; is it cash or does the company get credit for those sort of things?

A. It is cash as far as my experience is concerned.

90 Q. Was there any difference in this respect when you worked for the American?

A. No sir, they always paid their bills.

91 Q. State whether at the hearing before the railroad commissioners Andrew Bunton, superintendent of the American Express Company at that time in this division and George H. Babbitt, testified as witnesses?

Mr. DABNEY: Objected to as immaterial.

Mr. MOORES: I want to prove that they did.

436 A. They testified I think both of them; I cannot remember certainly; I wouldn't answer that on oath whether they testified or not; they were both there. I cannot remember definitely whether they did or not.

It is agreed that Mr. Andrew M. Bunton, whose name appears in the record spelled B-u-n-t-o-l, and George H. Babbitt, who testified before the board of railroad commissioners at the hearing referred to, are now dead.

92 Q. What other express company than the American that you know of runs on the Boston and Maine road beyond the borders of Massachusetts?

A. Well, I don't know of any except Jackson and Company. You mean runs outside of the State.

93 Q. Yes.

A. Yes sir.

94 Q. What ones run inside the State of Massachusetts, except the American with passenger train privileges?

A. Well, there is one runs to Waltham, Savery and Company; and Gibbs and Company of Waltham; and Russell and Company to Haverhill. There is a line runs to Andover, Tuttle, I think his name is, Tuttle's Express.

95 Q. All of these companies were in existence and operating on that road prior to the passage of the act of 1894, that we
437 have referred to, were they?

A. I think they were all running before that, I think they were; I am not sure. I think they were. There may be other expresses running on the different divisions, and I do not know what privileges they do have.

96 Q. But you know of none but Jackson and Company running outside of Massachusetts?

A. That is all I know of with passenger privileges.

Questions by Mr. DRURY:

97 Q. Mr. Coggswell, when you intended to start in with the Merchants Cooperative Express Company can you tell us briefly what negotiations you had with the Boston and Maine railroad with regard to starting that company, starting with the first negotiations and keeping on until you finally obtained your privilege?

Mr. DABNEY: We object to that as incompetent and immaterial, and calling for transactions between third parties and *res inter alios.*

Mr. DRURY: Of course, I do not desire to prove anything except the actual dealings between Mr. Coggswell's company and the Boston and Maine railroad.

Mr. DABNEY: Your witness can testify only to matters of
438 which he has personal knowledge and not hearsay.

A. Well, I know that we applied to the Boston and Maine *and* for the express privileges and they refused to grant them.

98 Q. Did you personally apply?

A. No sir, I did not.

99 Q. Did you write to the Boston and Maine railroad?

A. No sir I did not.

100 Q. Did you see what was written?

A. No sir, I did not.

101 Q. You did not?

A. No sir.

102 Q. Then these negotiations were undertaken by others than you and carried through by others than you?

A. They were undertaken by others. I did not do it myself personally.

Questions by Mr. MOORES:

103 Q. You attended the hearing?

A. I did yes sir.

104 Q. It was an admitted fact on that hearing by Mr. Dabney as counsel for the express company that such demand had been made?

439 Mr. DABNEY: I object to that as incompetent and immaterial, and not the proper way to prove matters of record.

A. I can not say as to that one way or the other. Of course, I can not say that Mr. Dabney admitted them. We should not, certainly, have gone to the railroad commissioners if we could have gone on the road without going.

Mr. DABNEY: The answer is objected to.

Questions by Mr. DRURY:

105 Q. I will ask you then why did you go to the railroad commissioners?

Mr. DABNEY: I object to that question because it has not been shown that the witness has knowledge on the subject.

106 Q. What reason was given you for asking you to come as a witness before the board of railroad commissioners?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. I was asked to come to testify in regard to our application.

107 Q. In regard to your application for what?

A. For express service.

440 108 Q. To obtain express privileges upon passenger trains on the Boston and Maine railroad if I understand you correctly?

A. Yes, sir.

Cross examination.

Questions by Mr. DABNEY, Esq.:

109 X Q. Mr. Coggswell you were cashier in the office of the American Express Company in Lawrence. Did you give what the dates were?

A. No, I think I was cashier about three years. I can not remember exactly.

110 X Q. Were those the three last years before 1894 or some prior period?

A. Oh they were between the time—I can not remember exactly—the time that I was cashier for them was I think between the years of 1898 and 1899 and some time in 1893.

111 X Q. 1888 and 1889 you mean?

A. Yes, the three years between 1889 and 1893, I think. I left the express company in 1893. I can not tell exactly the date.

112 X Q. You said in your former answer, Mr. Coggswell,

441 some time between 1898 and 1899 and 1893.

A. I don't mean that. I mean 1888 and 1889 and 1893. Some time during 1893, I left there.

113 X Q. As cashier you had charge only of the way bills and money that passed through the Lawrence office?

A. That is all.

114 X Q. And you didn't have charge of the express business in Lawrence?

A. No sir I did not.

115 X Q. Now you personally can not say—you didn't make any application for the Merchants Cooperative Express Company's privileges on the Boston and Maine and you were not present when it was made, were you?

A. Personally?

116 X Q. Yes.

A. No sir, I was not.

117 X Q. And it was not refused to you personally?

A. No sir.

118 X Q. And you were not present when it was refused by the railroad officials to anybody else, were you?

A. No sir I was not.

119 X Q. The Merchants Cooperative Express Company is a corporation under the laws of the State of Massachusetts, isn't it?

442 A. Yes sir.

120 X Q. And it was organized to do an express business between Boston and Lawrence?

A. Yes sir.

121 X Q. And you do business between Lawrence and Boston and between no other points?

A. Lawrence and Boston and Methuen.

122 X Q. Your capital is ten thousand dollars?

A. Five thousand dollars.

123 X Q. When you accept shipments to the south as you have stated you forward those by other express companies?

A. Yes sir.

124 X Q. From either Lawrence or Boston do you not?

A. From Boston.

125 X Q. Is your company what is known as a local express?

A. Yes sir, that is what it is known as.

126 X Q. And these other express companies that you have mentioned Gibbs and Company, Jackson and Company, Savery and Company, Russell and Company, Tuttle's Express, these are all local expresses, are they not?

A. Yes, that is what they are called.

127 X Q. That is, they do business between two specified points on the line of the Boston and Maine railroad?

443 A. Yes sir.

128 X Q. Now you don't know all the local express men on the Boston and Maine railroad do you?

A. I cannot recall them now.

129 X Q. You cannot recall all the places between which local express men run?

A. I don't remember, not today.

130 X Q. I notice you did not mention local express men running to Lynn?

A. Yes sir, there are local express men running to Lynn.

131 X Q. More than one, isn't there?

A. Yes sir, I think there are.

132 X Q. You did not mention any that run to Glouster. Is there a local express to that place?

A. Yes, I think there is a local express to Glouster.

133 X Q. And there are probably others that you have not mentioned?

A. Yes, very likely.

134 X Q. You have been asked about this statute of 1894 and the authority of the board of railroad commissioners. You understand, Mr. Coggswell, do you not that all persons and companies that then had privileges of doing express business on the railroads in 1894

when this act was passed had a right to continue in the same
444 way, did you not?

A. I am not sure come to think of it. If that is in the bill, why it is there. That is all there is to it. You have got it before, I haven't.

135 X Q. Then you didn't know that it was the right of the railroad company to refuse the privilege even to persons and corporations that wanted to begin business after the date of this act?

A. Yes, I did understand that.

136 X Q. And that they were compelled to admit all who were doing business before the passage of the act to go on with it?

A. Yes, I understood that they stayed on until they went out of business.

137 X Q. Did you know that the supreme court of Massachusetts compelled the Fitchburg Railroad Company to allow privileges on the passenger trains to express companies which had been doing business before the passage of that act only on freight trains?

A. No, I did not know that. I didn't understand that a- express company doing business, the supreme court compelled them to go on to the freight trains?

138 X Q. No, it was the other way; an express company which was doing business on the freight trains on the Fitchburg
445 railroad before the passage of the act was held by the supreme court to be entitled to the privilege of doing business on passenger trains without an license from the board of railroad commissioners?

A. No sir I am sure I never heard of that; that applied only to the Fitchburg railroad?

139 X Q. No.

A. No sir I never heard of that.

140 X Q. You didn't understand this act of the legislature of 1894 under which the Merchants Cooperative Express Company made an application to the board of railroad commissioners was confined to the Boston and Maine railroad, did you?

A. No, I did not.

Mr. MOORES: You mentioned the Fitchburg road.

Mr. DABNEY: That was where the case arose. There is such a decision. I will furnish you a citation to it.

Mr. MOORES: I will be very much obliged, if you can furnish it.

141 X Q. Now isn't it true that since the passage of this act that other railroads in Massachusetts besides the Boston and Maine have refused to allow new local expresses to come on their passenger trains?

A. Yes sir, I think so.

446 142 X Q. They have all done it, have they not?

A. I think they have. I don't know of any company that has obtained permission except our company. I don't know of any.

143 X Q. Well, did you know that there have been applications to the railroad commissioners to compel other railroads than the

Boston and Maine to take on local express men since that act was passed?

A. Other than the Boston and Maine?

144 X Q. Yes.

A. No, I can not say that I do.

145 X Q. Haven't there been application to compel the Boston and Maine and the New York, New Haven and Hartford to take on new express companies?

A. No sir, not to — knowledge.

Mr. DRURY: I don't care to object to your questions, Mr. Dabney, but they are open to the same objection as to the knowledge of the witness and also as to relevancy that you have made a number of times.

Mr. DABNEY: Yes, I am aware of that.

146 X Q. Mr. Coggswell, you never saw or read a contract
447 between the Boston and Maine railroad and the American Express Company, if there is one, did you?

A. No sir, I never did.

147 X Q. And you don't know what it contains?

A. I never have seen it.

148 X Q. And you say that in your opinion equal rights on the Boston and Maine railroad are not accorded to your company that are accorded to other companies; is that so?

A. I say that.

149 — Q. Have you ever made any complaint on the subject to the railroad commissioners?

A. No sir.

150 X Q. How long has it been so?

A. How long has it been so?

151 X Q. Yes.

A. Well it has always been so.

152 X Q. But you made no complaint?

A. We have made no complaint.

153 X Q. Did you have any personal knowledge of the amount and character of the express service performed over the Boston and Maine railroad by the American Express Company?

A. No, I have no means of knowing.

448 154 X Q. You have no means of knowing that?

A. No sir.

155 X Q. You say you have never seen their contract?

A. No sir.

156 X Q. You don't know then, of course, what that contract requires of the express company?

A. No sir.

157 X Q. Nor what it entitles them to?

A. No sir.

158 X Q. You don't know, for instance, whether the railroad can require them to establish an express service between any points on the line that they desire?

A. No sir.

159 X Q. You don't know anything about that?

A. I know nothing of the contract; I have never seen it.

160 X Q. And I suppose when you say that your rates are not equal, do you mean that they are not equal to those of the American Express Company or to those of some other express?

A. I mean that we do not have the same rates as the American Express Company.

161 X Q. Not as to any other local company that you know of?

449 A. There is no other local company that runs to Lawrence.

162 X Q. Then it is confined to what takes place between Boston and Lawrence that you consider that your rates are not equal?

A. Yes sir.

163 X Q. You say that you pay twenty-five cents a hundred pounds and pay for your messengers?

A. Yes sir.

164 X Q. And your idea is that the American pays a percentage of its receipts?

A. Yes sir.

165 X Q. And not a compensation based on weights?

A. That is what I understand.

166 X Q. Is there any other reason why you think your rights are not equal?

A. Other reason except what?

167 X Q. Except what you have given that you have to pay by weight and have to pay for season tickets for your messengers and that the American Express Company on the other hand does not?

A. No sir.

168 X Q. Those are the only reasons?

A. These are the only reasons.

169 X Q. Where do Jackson and Company run to?

450 A. Well they run to New Hampsire, they run to Portsmouth and to Dover and they run, I guess, to Amesbury and Newburyport. I don't know.

170 X Q. They are local express men between those points and Boston?

A. Yes, they are considered as a local express company.

171 X Q. Have you ever had the management of an express company with a greater capital than the Merchants Cooperative?

A. No sir that is the only company I have ever managed.

172 X Q. Do you send express matter on the freight trains, because it is cheaper to do that than on passenger trains?

A. Yes sir.

173 X Q. Do you know whether the American Express Company uses the freight trains for express business?

A. I don't think they do. I don't know of any case where they do.

174 X Q. There is nothing in your contract with the railroad

company which forbids your using the freight trains for the transportation of express matter?

A. No sir, I can use either I see fit to by paying so much for the weight.

175 X Q. What is the rate per one hundred pounds on the freight trains?

451 A. Eight cents a hundred.

176 X Q. You said that prior to 1894 other expresses had been permitted to do business on the Boston and Maine railroad; expresses other than the American I suppose you mean?

A. There were others there, yes sir.

177 X Q. Those same expresses that were doing business in 1894 have been permitted to do business on the Boston and Maine since?

A. Yes, as far as I know.

178 X Q. You have spoken of what you called a bank that you had as cashier to pay your bills You said as I remember it first that it was three hundred dollars?

A. Yes sir.

179 X Q. And afterwards increased to eight hundred dollars?

A. Yes sir.

180 X Q. Was there any change in that respect before you ceased to be cashier?

A. What, in regard to the amount?

181 X Q. In regard to the existence of this thing you called a bank?

A. No, I don't think there was any change in it between that time. There was only one change while I was there; it was increased from three hundred dollars to eight hundred dollars. I don't think it was changed again.

452 182 X Q. You don't think it was changed again?

A. I don't think it was before I left there.

183 X Q. Well while the business was conducted in that way were you required to remit immediately all receipts of the company in Lawrence?

A. While I was there we remitted every second day, I believe?

184 X Q. Every second day?

A. I think so.

185 X Q. All that you received?

A. Yes, we aimed to send our statements every two days.

186 X Q. None of the express receipts from the express business were used for paying expenses in Lawrence; those were paid out of the bank?

A. No, I won't answer that that way. We had eight hundred dollars as a bank. We paid out bills and at the end of the month we drew a draft on New York to pay our help.

187 X Q. You didn't use the bank at all?

A. We used it this way. If we were charging to the different mills in Lawrence so much money every day, and we were paying so much for money orders that were presented there and were not

selling money orders to that amount we used the bank; I
453 can tell you while I was cashier I furnished money to keep that account up; Mr. Pierce knows it, that I did that in order to keep it up.

188 X Q. What I was getting at is the system.

A. Well, I want to understand what you mean, because I intend to tell it just as it is.

189 X Q, I know you do. All the expenses of the business, the payments that were made by you as cashier by the American Express Company at Lawrence, were made out of this bank and were not made out of the receipts for the express business?

A. Yes sir.

190 X Q. The receipts were remitted every two days? Were they not?

A. Yes sir.

Re-examination.

Questions by Mr. DRURY:

191 R. Q. When you say that for a time you were indirectly employed by the American Express Company, Mr. Coggswell, what do you mean?

A. Well I suppose I am obliged to answer that?

192 R. Q. Well, you needn't answer it at any great length.
454 I will change the question. Did the American Express Company buy out Coggswell and Company?

A. Yes sir.

Mr. DABNEY: I object to the question as immaterial and incompetent.

193 R. Q. Were you working for the American Express Company under the name of Coggswell and Company?

A. I worked for the American Express Company under the name of Coggswell and Company.

194 R. Q. You didn't know of the amount of the bank of the American Express Company, at Lawrence, having been raised to more than eight hundred dollars, I think you say Mr. Coggswell?

A. No sir.

195 R. Q. Do you think from your experience in the express business and especially in conducting the Merchants Cooperative Express Company, that it would be wise business policy for your company to have brought another action before the board of railroad commissioners in order to correct the discrimination in rates, of which you complain? I ask this question that you may explain your answer to Mr. Dabney's question.

Mr. DABNEY: Objected to as incompetent and immaterial.

455 A. I think it would have been good business policy.

196 R. Q. You think it would have been good business policy?

A. Yes sir.

197 R. Q. But did you control the action of your company in that regard?

A. No, I did not.

Mr. DABNEY: That is objected to as incompetent and immaterial.

198 R. Q. When you spoke of yourself as a local express man do you have in mind any definition of the term local express man, as an express man doing business on freight rather than passenger trains?

A. No I can not say that I did.

199 R. Q. As a matter of fact is the greater portion of your business done, I mean the greater part in a financial sense, done on the passenger or on the freight trains?

Mr. DABNEY: Objected to as immaterial.

A. Well, I should think that it was about half and half.

200 R. Q. When Mr. Dabney called your attention to the names and places of various local expresses, did you have any difficulty in recollecting that there were local expresses to those places?

A. No sir, I remember that there were local expresses there.

456 201 R. Q. Do you know of Mr. Marsh who lives in Nashua, the express man?

A. Yes sir, I do.

202 R. Q. Do you know whether or not Mr. Marsh has any passenger privileges on the Boston and Maine railroad from Boston to Nashua or any passenger privileges on the Boston and Maine railroad outside of Massachusetts?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. I don't think he does.

203 R. Q. Do you know whether he has or not?

A. I wouldn't swear that he has not, but I am very sure that he has not.

204 R. Q. You have been informed; you have no knowledge, but simply information on the subject, as I understand.

A. I wouldn't swear that he has not, but I don't think he has.

205 R. Q. You cannot now recollect after Mr. Dabney's cross examination and after my questions any other local expresses than Jackson's express which has passenger privileges on the Boston and Maine railroad outside of the State of Massachusetts?

A. I don't recollect of anybody else.

457 Questions by Mr. MOORES:

206 R. Q. State whether or not the other local express companies that you have spoken of as doing business over the Boston and Maine in Massachusetts cooperated in the securing of the passage of the act of 1894?

A. Yes sir, the local express companies cooperated to secure it.

207 R. Q. And that law was procured largely at their instance?
A. Yes sir.
208 R. Q. Your capital stock is five thousand dollars?
A. Yes sir.
209 R. Q. All paid up?
A. Yes sir, all paid up.
210 R. Q. You maintain three offices?
A. Yes sir. Methuen, and Boston and Lawrence.
211 R. Q. And no others?
A. No sir.
212 R. Q. How many messengers do you employ?
A. Four.
213 R. Q. What percentage of your capital stock is invested in the equipment, and by that I mean horses and wagons and office furniture and books and blanks?

Mr. DABNEY: Objected to as incompetent and immaterial.

458 214 R. Q. Or for that matter, you may give the amount in the percentage, if you wish to.
A. Well, we have forty-five hundred dollars of the capital. I think that was what our stock was when we started; it has increased some since then.
215 R. Q. But it is not all in horses and wagons is it? What proportion of it is so invested?
A. I should say forty-five hundred dollars.
216 R. Q. Of the five thousand dollars?
A. Yes sir.

Re-cross examination.

Questions by Mr. DABNEY:

217 R. X Q. I want to know whether during the time you were cashier of this company in Lawrence, if you have been required to remit the receipts of the business every two days, but had been permitted to keep them and use them for paying the expenses, I want to know whether the receipts of the business would have been amply sufficient to pay all expenses in Lawrence without any bank?
A. If we kept the money?
459 218 R. X Q. If you kept the money in Lawrence wouldn't you have plenty of money to pay all that you had to pay in Lawrence?
A. No, I don't think we should.
219 R. X Q. Then it was a losing business, was it?
A. Well, I don't think you understand what I mean at all.
220 R. X Q. I am afraid I don't.
A. No, I don't think you understand what I mean when I say——
221 R. X Q. (Interrupting.) Well, I understand you to say that you had a bank; as I understand it that was a sum of money three hundred dollars to eight hundred dollars to be used in paying ex-

penses at Lawrence, and that the receipts of the business were remitted to New York every two days.

A. Every other day if I remember right.

222 R. X Q. And I understand you also to say that if you had not had that bank a*b*d had not remitted the receipts to New York that your receipts would not have sufficed to pay your expenses in Lawrence?

A. Well, we didn't pay our expenses in Lawrence from the receipts of the company.

223 R. X Q. I know you did not. I am only asking you whether to the best of your recollection if you had paid your ex-
460 penses out of the receipts, the receipts would have been enough to have met your expenses without any bank?

A. For the two days?

224 R. X Q. No, for any number of days.

A. Supposing we didn't remit for the month?

225 R. X Q. Yes.

A. And the receipts would have been enough to pay the expenses in Lawrence?

226 R. X Q. Yes.

A. Oh certainly, that is true. I did not understand what you were driving at. I will admit that.

(Witness excused.)

461 SAMUEL HENRY KENT, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. MOORES:

1 Q. Your name is Samuel Henry Kent and you live at Lynn, Massachusetts?

A. Yes sir.

2 Q. With what express company if any are you now connected?

A. Stone's express.

3 Q. With what express company were you last connected?

A. Childs and Kent Express Company.

4 Q. Was that incorporated?

A. Yes sir.

5 Q. What was the capital stock of that company, including the preferred stock?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. We capitalized under the laws of Massachusetts; there was no preferred stock; a paid up capital stock of twenty thousand dollars.

462 6 Q. And that company was consolidated with the North Shore Express Company, was it?

A. Pratt and Babb and Childs and Kent was under the name of the North Shore Express Company.

7 Q. What was its capital stock?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. One hundred thousand dollars preferred and fifty thousand common.

8 Q. Between what points did your company do business?

A. Which company was that?

9 Q. The North Shore.

Mr. DABNEY: Has this witness knowledge on this subject.

10 Q. What was your position with that company?

A. I was a director and the general manager of the Childs and Kent.

11 Q. And what position did you have, if any, with the North Shore?

A. Not any.

12 Q. You were a stockholder?

A. Yes, I am a stockholder today, I am sorry to say.

463 13 Q. Had you any knowledge of its business?

A. In what manner?

14 Q. Of its general business?

A. Oh yes, I was general manager of its business. I don't know how you want the question answered. I know about what they were doing.

15 Q. Stones' Express Company is a recently organized company, is it not?

A. No sir, I have gone into partnership with the Pratt and Babb.

16 Q. You and Mr. Stone have only recently gone into partnership, have you?

A. Yes sir, I have recently gone in with Mr. Stone, he had the business before sir.

17 Q. What percentage of the business of the Childs and Kent Company was credit and what cash?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. About I should say five-sevenths of it was credit.

18 Q. And the business amounted to how much per month?

Mr. DABNEY: Objected to as incompetent and immaterial.

464 A. We did, it fluctuated, of course in some years we did more than in others. It ran from sixty to ninety-five thousand dollars a year.

19 Q. Do you know enough about the business of the North Shore Express Company to say whether that percentage would hold good with it too?

A. No sir, I don't know anything about their business.

20 Q. The Childs and Kent Express Company run between Boston and Lynn, twelve miles?

A. Yes sir.

21 Q. It had no other agencies?

A. Well we had,—our charter allowed us to run between Lynn and Boston and any other cities and towns in the Commonwealth of Massachusetts. I run expresses for a while to Beverly.

22 Q. Lynn had a population of about seventy thousand at that time?

A. It has now, yes sir.

Cross examination.

Questions by Mr. DABNEY:

23 X Q. These companies you have mentioned, the Childs
465 and Kent Express Company, and the Pratt and Babb, and the North Shore, do what is known as a local express business?

A. Yes sir.

24 X Q. Was that the Pratt and Babb you mentioned?

A. Yes sir.

25 X Q. They were Lynn express men were they not?

A. Yes sir.

26 X Q. Both of them carried express matter on passenger trains?

A. Yes sir.

27 X Q. And the North Shore Express Company carried express matter on passenger trains?

A. The North Shore is the outcome of the two companies.

28 X Q. Is the North Shore Company still running?

A. Yes it just started. It was the Childs and Kent and Pratt and Babb.

29 X Q. And they had a local express business?

A. Just the same.

30 X Q. And do all of these companies carry part of their merchandise on freight trains?

A. Yes sir.

31 X Q. About what proportion?

A. Well I handle about one hundred tons a day over the
466 freight and we handle perhaps anywheres from one to two or three tons over the passenger trains.

32 X Q. This express company which you are now connected with, that is not incorporated?

A. No sir.

33 X Q. That is also a local express?

A. Yes sir.

34 X Q. And that runs on passenger trains?

A. No sir.

35 X Q. It doesn't run on passenger trains? It runs on freight trains?

A. It runs on a boat.

36 X Q. It runs on a boat between where?

A. Between Lynn and Boston, sir.

(Witness excused.)

At this point an adjournment is now taken until tomorrow, Saturday morning, at ten o'clock a. m.

467 Office of Lewis S. Dabney, Esq., 53 State street, Boston, Mass.

SATURDAY, *November 2nd*, 1901—ten o'clock a. m.

Met pursuant to adjournment.
Present: The same as on yesterday.

FRED N. ABBOTT, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. MOORES:

1 Q. Your name is Fred N. Abbott and you live in Lawrence, Massachusetts?
A. Yes sir.
2 Q. What is your present occupation, Mr. Abbott?
A. Deputy sheriff of Essex county.
3 Q. State whether you were ever in the express business.
A. Yes sir, I have been in that business a number of years.
4 Q. When did you first go into the business?
A. Twenty-eight years ago last December.
468 5 Q. How long did you continue in it?
A. I continued in it from that time until the summer of 1874, the first of July. I was sick for six months, and then I went back into the business again and continued in it up to the first of May, 1878; and then I went back into the business in the fall of 1883 or '4, I am not positive which, and continued in it until the 15th day of April, 1899.

By Mr. DABNEY:

6 Q. Where is the court sitting now?
A. At Lawrence, Judge Pierce has got one more week.

By Mr. MOORES:

7 Q. Have you ever had the control and management of the business of an express company, you may state, if you have, when and what company, or if more than one company, what companies?
A. At one time Charles Henry Smith and myself owned and conducted a line between Lawrence and Boston known as the Boston and Lawence Despatch. That must have been beginning October first, of 1884, and we run that line for six months and sold it out. I am quite positive it was 1884; it might possibly have been 1883, but I think it was 1884.
469 8 Q. To whom did you sell out?
A. To James G. Abbott and Son, James G. Abbott was the original owner of what was known as the Abbott Boston and Lawrence express., I went then into the employ of what was known as the Coggswell and Company express and continued there until the first of August, 1889, when the Peoples Express Company was started and I was the local agent, the Lawrence agent of that ex-

press and continued to be the local agent at Lawrence up to the first of August, 1898, with the exception of about six months when the line was withdrawn and I was assistant agent at the American Express Company at Lawrence.

9 Q. How long were you in the employ of the American Express Company?

A. That I couldn't tell.

10 Q. Either directly in its employ, or indirectly through the Peoples Express Company?

Mr. DABNEY: I should like to have the witness only answer what he knows.

Mr. MOORES: I will withdraw that question.

A. I know for a fact that I was assistant agent from the first
470 of August until January. No, it wasn't as long as that; some time in November.

By Mr. DABNEY:

11 Q. What August, of what year, were you assistant agent? Which year was that?

A. I am not positive whether it was 1894 or 1895, and from the first of August 1898 until the 15th of April, 1899, I was employed as messenger for the American Express Company. I know that. And after they bought the Peoples Express Company back in November after we had withdrawn it, the first day of July, I know that I was employed by the American Express Company, then, because I made my returns to the treasurer of the American Express Company.

12 Q. At the time of your original connection with the Peoples Express Company, your relation to it was that of one of the proprietors, was it?

A. At the first, when the line was started in 1889?

13 Q. You were one of the proprietors?

A. I was one of the proprietors. Mr. Scannell who is now connected with the American Express Company and myself started this line with a man by the name of Ells, David Ells.

14 Q. Mr. Ells is now dead?

471 A. I don't know, I am sure, I have but a slight acquaintance with him.

15 Q These companies for whom you worked as well as those in which you had a part ownership and management were in the express business doing it both on freight and passenger trains, were they?

A. Well, when the Peoples line was started for some time we did nothing but freight business. I think we run it very near a year as purely a freight line. We transported stuff wholly on freight trains.

By Mr. MOORES:

16 Q. And after that?

A. Well, some time the next spring,—I don't, but it couldn't have

been a year, because I know we were running on the passenger trains during the fruit season.

By Mr. DRURY:

17 Q. When was it as to date about when the Peoples Express Company started doing business on the passenger trains?

A. It was some time in the spring of the next year.

18 Q. Some time in the spring of 1890?

A. 1890, yes sir.

19 Q. Then in what extent did your passenger business increase in proportion to your freight business?

472 Mr. DABNEY: I will object to that as incompetent and immaterial.

A. During that summer it increased very much and got to be so that our passenger business was fully as large as the freight.

20 Q. During that summer, and in 1891 and 1892, did it continue at that amount or did it increase?

A. Well it didn't increase very materially from the fact that we were limited to just local Boston and Lawrence business.

21 Q. During that time 1890 and 1891 and 1892 *and*, what were the rates of the Peoples Express Company as compared with those of other express companies doing business in Lawrence?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. The rates, the passenger rates were the same as the American; our freight rates——

22 Q. (Interrupting.) As compared with other companies how were they?

A. There were no other companies doing any passenger
473 business in Lawrence except the Peoples and the American.

23 Q. No other companies at that time did a passenger business?

A. No sir.

24 Q. There had been prior to that time companies doing a passenger business in Lawrence, had there not, doing business on the passenger trains?

A. Well, there hadn't been for some little time, a year or two.

25 Q. A year or two before the Peoples Express Company started in?

A. Yes sir.

26 Q. What was the name of the company that went out of business a year or two before the Peoples Express Company started in, the company or companies?

A. Well, the Coggswell and Company's line was run separate from the American.

27 Q. Prior to when?

A. Prior to our going on and using the passenger trains.

28 Q. And prior to your starting in business at all, they were run-

ning separate from the American Express Company at the same time that you were doing business?

A. About that time they merged and it all went into the American.

29 Q. You have spoken of James G. Abbott; when did his
474 company go out of business?

A. I think they continued along until 1891, the fall of 1891.

30 Q. In the fall of 1891, they continued in business until the fall of 1891?

A. Yes sir.

31 Q. Did they do business on passenger trains during the last part of their doing business?

A. No sir, they never did.

32 Q. Never had done business on passenger trains?

A. No, because they had the Boston and Lawrence Despatch and they never did business on passenger trains while we did business on them. They bought us out and continued to do the freight business.

33 Q. Well, then I will ask you what were your freight rates as compared with those of other companies doing business on freight trains?

Mr. DABNEY: I object to that as incompetent and immaterial.

A. The freight rates have always been twenty-five cents a hundred; they never was anything less to my knowledge.

475 By Mr. MOORES:

34 Q. From your knowledge of the express business as obtained in these various occupations, what proportion of the business is on a cash and what on a credit basis?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. I should say seven-tenths of it or very near. By cash do you mean payable monthly or payable at the time the shipments are made?

35 Q. Payable—either prepaid or paid at the time of delivery?

A. At the time of delivery by the consignor or at the time of delivery to the consignee?

36 Q. I don't understand you Mr. Abbott?

A. Delivery to the consignee?

37 Q. That is, it was either prepaid or collected?

A. Yes sir.

38 Q. But what percentage of it was cash at the time the goods were delivered to you for shipment in your recollection?

A. A very small percentage of the local business. I don't think between Lawrence and Boston the prepaid matter would
476 amount to five dollars a hundred. I mean by that it would have either be- collected on delivery or charged.

39 Q. A portion of the business was charged?
A. Yes sir.
40 Q. To the consignor?
A. Yes sir.
41 Q. And was it a very large proportion?

Mr. DABNEY: I object to that form of the question.

A. Not in regard to the local, just the local business between Lawrence and Boston.
42 Q. What classes of shippers carried accounts with the company payable periodically?
A. The large corporations. The manufacturing corporations there. The mills, the largest shippers paid once a month.
43 Q. Was that true with regard to the business done by the American Express Company as well as the other companies?

Mr. DABNEY: If he knows.

44 Q. Do you know whether that was true with regard to the American Express Company's business too?
A. At the time I was there it was true.
45 Q. How about the expenses of the express company. They had to be met promptly, did they not?
477 A. Yes sir.
46 Q. Or was there credit business in that respect; how about the wages of employés?
A. My experience was that they always had to be paid; the transportation and the keeping of teams and repairs.
47 Q. How about the losses of money in packages, damages and breakages, were they promptly paid or was time taken there?
A. The majority of them had to be paid at once.
48 Q. The payments to the railroads were made promptly or was there credit given there?
A. I don't remember ever getting over a week's credit at the railroads and the tickets had to be paid for in advance.

Mr. DABNEY: I object to the answer.

49 Q. In your opinion would it be possible for an express company having a complete equipment to engage in the express business generally or locally without available cash other than its equipment?

Mr. DABNEY: I object to that because the witness has not been shown to be competent and also because it is incompetent and immaterial.

A. No sir.
478 50 Q. For what purposes are a cash capital required in the express business?
A. Well, for the reason that the transportation and help has to be paid before the end of the month when the monthly accounts are collected for that month.

51 Q. Isn't that true also of losses and repairs?
A. Yes sir.
52 Q. Do you regard credit as of value in the express business?

Mr. DABNEY: I object to that as incompetent and immaterial.

53 Q. Well, state whether you regard credit as of value in the express business, the possession of credit by the express company?
A. Oh yes, indeed, certainly.
54 Q. Would it be in your judgment possible for an express company, which possessed neither the cash capital nor credit to make contracts with railroad companies for transportation of express matter?

Mr. DABNEY: I object to that as incompetent and immaterial. And also for the reason that the witness is not shown to have had any experience in making contracts between express companies and railroad companies for express business.

479 A. No sir. I do consider it important to have cash capital or credit.
55 Q. Now what experience have you had in making contracts with railroad companies for express business?
A. Well, at the time I was running the Boston and Lawrence Despatch I went several times to the railroads to make contracts and they wanted to know what surety I could give in order to guarantee my faithful performance of any contract they might decide to make, and they asked in regard to the amount of capital that we had in the business and in regard to our responsibility.

Mr. DABNEY: Answer objected to as being a narrative of a personal experience.

56 Q. You have had experience in applying for and making contracts on behalf of express companies?
A. I had the experience of applying, but I did not succeed in making it.
57 Q. Have you knowledge of others who have had similar experiences and if so you may name them, to your own knowledge?
A. Yes sir.
58 Q. Name them.
A. It was a man by the name of Milton Kimble, of Lawrence, at that time.
480 59 Q. Any one else?
A. I don't recollect any one else at the present time.
60 Q. While you were agent of the American Express Company at Lawrence state whether or not any deposit was left in charge of the agent of the American Express Company to meet current expenses and incidentals, within your knowledge.
A. I never was agent of the American Express Company. I was only assistant. Is that what you have reference to?
61 Q. Yes.
A. I know they had what they called a bank.

62 Q. And what was the size of that bank while you were in their employ?

A. My impression is it was eight hundred dollars. I know it had been raised a short time before I went there.

63 Q. From what amount, if you remember?

A. I think from five hundred dollars.

64 Q. And this money was how kept and intended for what purpose?

A. To meet the general demand in cashing money orders and paying the help and horse board.

65 Q. After you ceased to own the Peoples Express Company, whose property did it become, if you know?

481 A. I know that my instructions were to ship all the goods of the American Express Company to Mr. Hale who had charge of the stable on the first of July. Previous to that I had had a bank—Mr. Scannell who was managing this end, sent a bank, and at that time the bank came from the National Express Company. I sent my receipt for the bank of three hundred dollars to the National Express Company.

66 Q. You accounted to the National Express Company for the business of——

A. (Interrupting.) The Peoples line previous to the time that I got instructions to ship everything to Boston to Mr. Hale.

67 Q. And what bank, if any, did the National Express Company keep with you?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. Three hundred dollars.

68 Q. Has it been the custom from time to time of larger express companies, like the American Express Company, and of the American Express Company, to buy out the small local expresses?

Mr. DABNEY: I object to that as incompetent and immaterial, and as a subject on which the witness is not shown to have any knowledge.

482 A. They have done it.

69 Q. What knowledge have you of such business having been absorbed by the American Express Company, if any?

A. Well, in our own city, I know that the two lines that were there were bought by the American Express Company.

70 Q. Those two lines that you refer to are the Abbott and Coggswell expresses?

A. Yes sir.

71 Q. Such purchases have to your knowledge been made for cash?

A. I couldn't say as to that.

72 Q. Do you remember, Mr. Abbott, the petition filed with the board of railroad commissioners in October, 1894, by the Merchants Cooperative Express Company and another by Post-Gardner Ex-

press Company and a third by private individuals asking passenger privileges over railroads?

A. I don't remember the petitions; I remember the hearing before the railroad commissioners.

73 Q. You were a witness before that hearing?

A. Yes sir.

74 Q. What knowledge, have you, if any, that the Boston and Maine Railroad Company refused to make contracts with
483 express companies other than the American Express Company after the year 1893?

Mr. DABNEY: Objected to as incompetent and immaterial.

A. I have no personal knowledge.

75 Q. When you were in the express business for the Peoples Company under your own ownership, state whether or not you had passenger train privileges on the Boston and Maine?

A. Not at first.

76 Q. What course was pursued by the Peoples Express Company with regards to express matter, which you wished delivered on passenger trains?

Mr. DABNEY: I object to that as incompetent and immaterial.

A. When the company first started or later on?

77 Q. Later on.

A. Well, at the last of my being with the Peoples Express Company anything that we had that was important we used to forward by the American Express Company; and then go and get it and deliver it after it had arrived in Lawrence.

484 Cross examination.

Questions by Mr. DABNEY:

78 X Q. Mr. Abbott, these companies that you have spoken of that you were engaged with in Lawrence were they all local expresses between Boston and Lawrence?

A. Yes.

79 X Q. These twenty-eight years from the time you started until the summer of July 1st, 1874, under what name was that express conducted?

A. My first employment was with the Abbott express.

80 X Q. You were employed by the James G. Abbott express?

A. Yes sir, at first.

81 X Q. And the Peoples Express Comp-ny I take it was the first you were connected with as a proprietor?

A. No sir.

82 X Q. What was it?

A. Boston and Lawrence Despatch.

83 X Q. Which only did business on the freight trains?

A. Yes sir.

84 X Q. Then you became proprietor of the Peoples?
A. I was one of the three that were running the express.
85 X Q. Were either of those expresses either the Boston and Lawrence Despatch or the Peoples incorporated?
485 A. Yes sir.
86 X Q. The six months that you were actually in the employ of the American Express Company in what capacity were you employed?
A. As messenger the last six months that I was employed.
87 X Q. Were you ever in the employ of the American Express Company in any other capacity?
A. Yes sir, as assistant agent at Lawrence.
88 X Q. Who was the agent at Lawrence?
A. Lewis Saunders.
89 X Q. And when was that?
A. From July 1st, 1894, until some time in the fall; within a few days of the time of the hearing before the commission.
90 X Q. Before the commission?
A. Yes.
91 X Q. What were your duties as assistant agent?
A. To assist the agent in anything.
92 X Q. Did you have anything to do with the cash?
A. No sir.
93 X Q. How did you acquire any knowledge about any bank as you called it? Is that what somebody told you?
A. I never handled any of the money.
94 X Q. Well, did you have any knowledge except from
486 hearsay that there was any such thing as a bank?
A. I can not say that I did.
95 X Q. You say you never handled any of the money?
A. Well, I accounted for money; if I handled any of the money I accounted to the cashier for it. I don't say that I didn't handle any money while I was there, but if I did it was turned over to the cashier.
96 X Q. To what cashier?
A. To the cashier in charge at that time?
97 X Q. In Lawrence?
A. Yes sir.
98 X Q. How do you know anything about these corporation- that you have mentioned, the mills and the machine shops and about when they paid their bills to the American Express Company?
A. I have collected them and helped make out their bills, and have taken them to the corporation and have collected the money.
99 X Q. How did you know how often bills were sent by the American Express Company, I am not speaking of any other?
A. Because I helped make them out. We made out monthly bills.
100 X Q. Now in the case of these local express companies,
487 where you say seven-tenths of the compensation of the carriage was either prepaid or paid at the time of the delivery

to the consignee, the delivery to the consignee would be made on the same day or the next day after the package was received, wouldn't it?

A. Some times.

101 X Q. That would be the general rule. Were you present when Mr. Kimble made any application to the railroad company for any kind of contract and was refused?

A. No sir.

102 X Q. Do you know anything more about it except that he has told you so?

A. Yes sir.

103 X Q. What do you know?

A. He showed me a letter that he had.

104 X Q. He showed you a letter?

A. Yes sir, refusing them.

105 X Q. Who signed the letter?

A. It was from James T. Furber's office.

106 X Q. Who signed it?

A. I don't remember.

107 X Q. Did you have any personal knowledge of the purchase of the Abbott and Coggswell expresses that you have testified to by the American Express Company?

488 A. Well, I know that they took the business and took everything in.

108 X Q. Well, were you concerned in the negotiations?

A. No sir.

109 X Q. Do you know anything about the terms?

A. No sir.

110 X Q. Nor the price paid?

A. No sir.

111 X Q. Now whether it was cash or credit?

A. No sir.

112 X Q. Or whether anything was paid?

A. No sir.

113 X Q. What capital had the Boston and Lawrence Despatch Company after you started it?

A. It had very little.

114 X Q. How much?

A. I couldn't tell you just exactly how much.

115 X Q. Well, about how much?

A. It didn't have enough to run on successfully, I know that.

116 X Q. Well, will you name any figure that it did not exceed?

A. No sir, I could not.

117 X Q. Was it as much as one thousand dollars?

A. No sir.

489 118 X Q. Was it as much as five hundred dollars?

A. I won't say.

119 X Q. How much capital did the Peoples Company have when you started it?

A. I couldn't say.

120 X Q. Was that as much as five hundred dollars?
A. I don't know.
121 X Q. You were one of the proprietors?
A. I was considered as such.
122 X Q. Didn't you know how much capital it had?
A. No sir.
123 X Q. So you couldn't say whether it was as much as or more than a thousand dollars?
A. No.
124 X Q. That bank of eight hundred dollars so far as you know was sufficient for running the business of the American Express Company at Lawrence, wasn't it?
A. I can't say as to that.
125 X Q. You can't say that it was not?
A. I never knew of their being short.
126 X Q. You say you remember these petitions of the Merchants Cooperative Express Company of Lawrence?
A. No, I didn't say so.
127 X Q. You remember the hearing on them?
490 A. Yes sir.
128 X Q. Do you remember that there was a hearing for the Post-Gardner Express Company?
A. I remember there was one for Post-Gardner. I was present, but I was not a witness.
129 X Q. You were present as a witness at the hearing on the Merchants?
A. Yes sir.
130 X Q. Which side?
A. I was summoned by the Merchants Cooperative Express Company; and I was in the employ of the American Express Company and was considered as your witness at the time.

Mr. DABNEY: Will you please note an objection to the answer as to the witness stating what he was considered.

131 X Q. You were summoned you say by the Merchants?
A. I was, well I don't know. I was summoned by the late E. T. Bradley, of Lawrence.
132 X. Q. Mr. Bradley appeared for the Merchants Cooperative, didn't he?
A. He did.
133 X Q. And he summoned you?
A. Yes sir.
134 X Q. And he put you on the stand and examined you?
491 A. Yes sir.
135 X Q. And Mr. Coggswell was there, Mr. Thomas M. Coggswell, he was there?
A. Yes, sir.
136 X Q. He was one of the promoters of the Merchants Cooperative?
A. He was the manager at that time.

137 X Q. And the American Express Company was represented at the hearing?
A. They were.
138 X Q. And the Boston and Maine railroad also?
A. Yes, sir.
139 X Q. And there was a good deal of a fight, wasn't there?
A. I thought so.
140 X Q. And a good deal of feeling about it?
A. Yes sir. I know I was about three hours on the stand.

Re-examination.

Questions by Mr. MOORES:

141 R. Q. You were assistant agent for the American Express Company at Lawrence, and it was your duty to assist the
492 agent in the keeping of books of the company there, was it not? The agent's books?
A. No, I wouldn't say that it was.
142 R. Q. State whether you ever heard Mr. Saunders say what his bank was while you were there?
A. I couldn't say whether I ever heard Mr. Saunders state it or not.
143 R. Q. Well, how did you know then what the bank was, Mr. Abbott?
A. I don't know as I can tell that even.
144 R. Q. Had you access to the bank books of the agent?
A. No, I don't know that I had. I have seen the books of the concern, but they kept no bank account at that time.
145 R. Q. Where did the agent keep the bank if you know?
A. In the office.
146 R. Q. In the office, in the safe?
A. Yes, sir.
147 R. Q. Who conducted the correspondence with your superior division officer? Yourself, or Mr. Saunders?
A. Mr. Saunders.
148 R. Q. Who opened the correspondence, you or he?
A. Well, Mr. Saunders generally.
493 149 R. Q. But you had access to it?
A. Yes.
150 R. Q. Do you remember in correspondence with the division superintendent any statement as to the amount of the bank?
A. No, while I was there, there was none whatever.
151 R. Q. No correspondence about it?
A. No sir; the bank had been increased before I went there, some little time, I think. It was while Mr. Coggswell was cashier.

Mr. DABNEY: I object to the last part of that answer, as a statement not within the knowledge of the witness.

152 R. Q. Who was James T. Furber?

A. He was the general manager of the Boston and Maine railroad.

153 R. Q. And where is Milton Kimble?

A. I don't know.

154 R. Q. How long has it been since you have heard of him?

A. It was either in 1893 or 1894.

155 R. Q. At that time you and he resided in the same place?

A. No sir, he resided somewhere in New Hampshire. I met him at Old Orchard Beach.

494 156 R. Q. Who kept the letter that he showed you? Was it returned to him?

A. Yes sir.

157 R. Q. And you have no knowledge as to his whereabouts?

A. No sir.

158 R. Q. Was that the same Furber whom you interviewed when you applied for that contract?

A. Yes sir.

159 R. Q. And was he the same who signed this letter to Milton Kimble?

A. Yes sir.

Mr. DABNEY: I object to that as to its form, and because assuming a statement not made by the witness.

160 R. Q. With whom did you talk when you applied for a contract with the Boston and Maine?

A. I had several talks with Mr. Furber.

161 R. Q. The same Furber?

A. Yes sir.

(Witness excused.)

Recess is now taken until two o'clock p. m.

495 BOSTON, MASSACHUSETTS,
November 2nd, 1901—two o'clock p. m.

Met pursuant to adjournment;

Present: The same as before recess.

HENRY A. MARSH, a witness called on behalf of the defendant, being first duly sworn, testified as follows:

Direct examination.

Questions by Mr. MOORES:

1 Q. Your name is Henry A. Marsh and you live at Nashua, New Hampshire?

A. Yes, sir.

2 Q. How long have you been in the express business?

A. In my present capacity sixteen years and a little over.

3 Q. You were first engaged in the business when?

A. In 1863.

4 Q. What connection, if any, have you with Marsh's Express Company, so-called?

496 A. I am the manager of the Marsh Express Company, so-called.

5 Q. Which does business between what points?

A. Between Wilton, New Hampshire and Boston and intermediate points; Nashua and Milford.

6 Q. Upon what railroad does it do business?

A. The Boston and Maine.

7 Q. If at any time you have attempted to make a contract with the Boston and Maine Railroad Company for the carrying of express matter and messengers, you may so state.

Mr. DABNEY: I object to that as incompetent and immaterial.

A. I have made verbal applications. I have never made a formal demand for these privileges on the trains.

8 Q. You have, however, asked for privileges?

A. I have asked for privileges on passenger trains.

9 Q. Has your request for passenger privileges ever been granted?

A. No, sir.

10 Q. State whether or not you have been able to make a contract with the railroad company.

A. I never have.

11 Q. You never have?

A. Never.

497 12 Q. You may explain your method of doing business on passenger trains?

Mr. DABNEY: I object to that as incompetent and immaterial.

A. I don't do express business on passenger trains.

13 Q. You do, however, transmit by means of messengers valuables and valuable packages between those points?

A. I have two messengers besides myself who run over the road daily carrying a grip sack and a hand-bag.

14 Q. What arrangements have you been able to make or have you made with the railroad company for carrying them, as to fare, the payment of fare?

A. I pay regular season ticket fare, the same as any passenger.

15 Q. That is the best arrangement that you have been able to make?

A. Yes, sir.

16 Q. I will ask you if your messengers are permitted by the railroad company to check baggage as are other passengers?

A. No sir.

17 Q. I will ask if complaint- have been made to you or to your messengers or to any of your of the practice of carrying bun-

498 dles and other packages outside the grip-sack and hand-bag, by the Boston and Maine Railroad officials?

Mr. DABNEY: I object to that as incompetent and irrelevant and immaterial.

A. It has been.

18 Q. What valuables and express matter are not carried in the hand-bags that you and your messengers carry, are shipped over the road how?

A. By freight.

19 Q. For what rates?

A. First class freight rates.

20 Q. You have not been able to obtain any privileges on passenger trains except as stated, have you?

Mr. DABNEY: Objected to as incompetent and immaterial.

21 Q. What is the expres-men's league?

A. Well, it is an association of expressmen doing business in and out of Boston; in and from Boston.

22 Q. What office do you hold in that league?

A. I am president of the league.

23 Q. How many express concerns are represented in that league or belong to it?

499 A. I can not give you the number.

24 Q. Well approximately.

A. Between two and three hundred, I should say. Something like two hundred and fifty; possibly more than that.

25 Q. If you know whether any of them are accorded express privileges on passenger trains outside of Massachusetts, you will so state.

Mr. DABNEY: Objected to as incompetent and immaterial.

A. What do you mean? Running from Boston into other States? Interstate business?

26 Q. Yes.

A. There are some.

27 Q. What one.

Mr. DABNEY: I objected to that as incompetent and immaterial, and irrelevant.

A. Jackson's Express line to Portsmouth, New Hampshire; Perkins' to Exeter; Goodwin running to Great Falls; these are all the ones that I recall; there may be others. I think there is a
500 line or has been a line running to Dover, but I don't know what the situation of affairs is at Dover at the present time. It was the Niles express, and I think they sold out to Jackson. I am not sure about that; but there are those three expresses.

28 Q. All of them run on the Boston and Maine?

A. Yes sir.

29 Q. And the Perkins and Goodwin companies do an express business on passenger trains, do they?

A. Yes sir.

30 Q. Do you know whether the terms which they obtain are the same as the American Express Company's terms?

A. I don't know anything about it, but I don't think so. They pay by the hundred. They pay so much per hundred pounds for whatever freight they carry on passenger trains.

Mr. DABNEY: The answer is objected to as to all that follows the witness' declaration that he don't know.

31 Q. You do know, in point of fact, that they pay full fare for their messengers, do you not?

Mr. DABNEY: Objected to for form and substance.

501 A. Well, I can't say, that I know that actual fact, because I never saw them pay for any tickets. I know this much: that they are permitted to run, continue to run under the act of 1894, that places all of the Massachusetts lines upon passenger trains, that is that secures them in their position; they were already on the lines and this act of 1894 simply give them a legal standing, which they did not think they had before that. Of course, Mr. Dabney knows about that.

32 Q. All of the lines you have mentioned were doing business on the Boston and Maine prior to the passage of the act of 1894?

A. They were, yes sir.

33 Q. Were you connected officially with the expressmen's league in 1893 and 1894?

A. I was.

34 Q. Were you then president?

A. I was not president. I guess I had been president. I was a member of the board of management of the expressmen's league.

35 Q. You are familiar with the steps preliminary to the passage of the act of 1894, concerning the expressmen and their privileges?

A. I have been, yes sir.

502 36 Q. State whether the expressmen's league took an active part in promoting the passage of that and similar acts at that time?

A. They did, sir.

Mr. DABNEY: I object to that as incompetent and immaterial.

37 Q. If you know, state why the expressmen's league took so active a part in that legislation?

Mr. DABNEY: Objected to.

A. Because of the membership who had come to believe that their interests were in jeopardy, that the laws upon the statute books of Massachusetts were uncertain, and I think that attempts had been made to put the business into the hands of the American Express Company ultimately and exclude the local companies.

Mr. DABNEY: I object to the answer as hearsay and incompetent; for that and for other reasons.

503 Cross examination.

Questions by Mr. DABNEY:

38 X Q. Mr. Marsh, your messengers ride you say on season tickets?

A. Yes sir.

39 X Q. Do you know whether any passenger riding on season tickets is permitted to check baggage?

A. I don't know sir.

40 X Q. You don't know whether a season ticket such as you and your messengers ride on is one that doesn't carry the right to check baggage?

A. I don't know. I declare I don't know that. (Witness looks at ticket.) The clause is: "The holder can not do express business nor carry any more than ordinary personal baggage on this ticket." Under that, of course, they could not.

Mr. MOORES: Read that clause five to the examiner and let him take it.

The WITNESS (reading): "The holder can not do express business nor carry more than ordinary personal baggage on this ticket."

504 41 X Q. The season ticket is sold at reduced rates, is it not?

A. At reduced rates? I don't know what you mean.

42 X Q. Sold less than single passenger tickets.

A. Oh certainly; I guess so; it looks that way.

43 X Q. Mr. Marsh, haven't you been opposed to any repeal of the act of 1894?

A. No, personally, no.

44 X Q. Personally no, but the league is?

A. The league? Well, yes, in a certain way. Not absolutely opposed. They have by vote of the board of management——

45 X Q. (Interrupting.) One moment please, I am not asking you about the vote. I suppose the vote is in writing, isn't it?

A. Oh, undoubtedly it is a matter of record, I suppose.

Mr. MOORES: The vote is not in writing, probably the record of it may be.

The WITNESS: The record, yes sir.

46 X Q. You say you have made verbal applications for privileges on passenger trains; to whom have you made those applications?

A. To Mr. W. F. Berry, the second vice-president of the Boston and Maine.

47 X Q. Mr. Marsh, the membership of this league is not
505 confined to the local expresses, is it?

A. No sir.

48 X Q. Persons employed by the contract companies are also members, are they not?

A. They are. All of the contract companies are members by some one of their managers or agents, or some one.

49 X Q. Is the Adams?

A. The Adams express, the American, the National, and the Wells-Fargo, I think the Wells-Fargo and the National are represented by one person Mr. Dwight, who is the general agent. A Mr. Pierce, I believe, represents the American express, Mr. Spencer is a member of it; Mr. Spencer of the Adams.

50 X Q. Isn't Mr. Ledyard a member?

A. No sir.

Re-examination.

Questions by Mr. MOORES:

51 R. Q. These season tickets that are sold to you and to your employés are made personal in terms and are not transferable?

A. No sir. This ticket that I use is identical with any.

506 If you went to the Boston and Maine road for a season ticket, you would get just exactly the same ticket that I got.

52 R. Q. The ticket is a purely personal ticket and is not transferable?

A. It is not transferable.

53 R. Q. It has your name on the back?

A. Yes sir.

54 R. Q. Or that of the messengers?

A. Yes sir.

55 R. Q. If any express companies or persons engaged in the express business have sold out within the last ten years to the American Express Company or to Jackson's express or have been absorbed by them, you may so state?

Objected to as incompetent and immaterial.

A. I don't know that any express line has been sold to the American Express Company within ten years. I don't think they have bought it. They haven't to my knowledge. Jackson's express has bought two or three different lines within that time running over the Boston and Maine; one was the Fox express running to Newburyport, and Slocumb to Ipswich.

507 56 R. Q. That is another express business, is it?

A. That is an express to Ipswich, Massachusetts; and I think that Niles, running to Dover, New Hampshire, I think they bought the Niles Express Company. I am not quite sure. In fact, I didn't prepare myself for this examination because I didn't know what the line of your question would be, or what you wanted to find out.

(Witness excused.)

An adjournment is now taken subject to the time and place to be fixed hereafter upon notice to the parties.

508 INDIANAPOLIS, INDIANA, FRIDAY, *June* 13, 1902.

The parties met at the office of Baker & Daniels, Ingalls building, Indianapolis, Indiana.

Present: Baker & Daniels, for the complainant; Merrill Moores, Esq., assistant attorney general, for the defendant.

The complainant offers in evidence a copy made by the special examiner of the annual return of the American Express Company for the year 1901, to the auditor of state for the State of Indiana; and it is stipulated and agreed that said copy shall be admitted in evidence with the same force and effect as if the original had been produced or a certified copy thereof.

It is stipulated by the parties that a copy made by the special examiner from the proceedings of the Indiana State board of tax commissioners, for the year 1901, shall be admitted in evidence with the same force and effect as if the original had been produced or a certified copy thereof.

509 The annual return for the year 1901, so admitted in evidence is marked "Complainant's Exhibit No. 17;" and the copy from the proceedings of the Indiana State board of tax commissioners for the year 1901, so admitted in evidence is marked "Complainant's Exhibit No. 18," and the same are in the words and figures following to-wit:

510 Copy.

COMPLAINANT'S EXHIBIT No. 17. Rowland Evans, Special Examiner.

Express companies.

1901.

Indiana.

(This blank to be filed with the auditor of State between April 1 and June 1.)

Annual Return of the American Express Company to the Auditor of State, as Required by the Act of March 6, 1893.

Item 1. Total number of interests, 180,000, of $100.00 each	$18,000,000.
Item 2. No. of interests issued and outstanding 180,000 interests	
a. Par or face value of each interest, all interests are of equal value	$100.
Item 3. Principal place of business New York, in the State of New York	
Item 4. Market value of shares of stock on the 1st day of April, 1901	$—
a. If interests have no market value then state actual value thereof	$150. per interest.

This company is not a corporation but a partnership or joint stock association organized under articles of agreement between its members.

It possesses no rights, privileges or franchises other than such as are enjoyed by any private individual or association of individuals.

511 Item 5. Real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation *within the State of Indiana*, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

County.	* Description of real estate, structure, machinery, etc.	Assessed value.
Bartholomew	Personal property	65
Boone	" "	20
Benton	" "	50
Clinton	" "	325
Clay	" "	45
Decatur	" "	150
Delaware	" "	350
Dearborn	" "	20
Elkhart	" "	370
Floyd	" "	175
Fayette	" "	100
Fountain	" "	35
Grant	" "	335
Greene	" "	30
Henry	" "	30
Hancock	" "	20
Hamilton	" "	15
Jasper	" "	30
Kosciusko	" "	35
Knox	" "	150
Lake	" "	225
Laporte	" "	350
Lawrence	" "	200
Madison	" "	350
Montgomery	" "	250
Monroe	" "	150
Marion	" " and real estate	9600
Newton	" "	25
Orange	" "	50
Putnam	" "	275
Randolph	" "	185
Ripley	" "	125

St. Joseph	...Personal property			225
Sullivan	"	"		45
Tippecanoe	"	"		500
Vigo	"	"		500
Vanderburg	"	"		550
Vermilion	"	"		100
Wabash	"	"		210
Washington	"	"		20
White	"	"		55
Wayne	"	"		1095
				$17455

* Township.

The above personal property consists of horses, wagons, harnesses, safes, &c., &c.

The following property, of the like description, is in use by the National Express Company, and is assessed to it for local taxation, but actually belongs to this company—being used by the National Express Company as agent of this company.

Allen	Horses, wagons, office fixtures, scales, safes...							625
Elkhart	"	"	"	"	"	"	...	108
Howard	"	"	"	"	"	"	...	143
Wells	"	"	"	"	"	"	...	140
								18471

512 Item 6. Specific real estate, together with the permanent improvements thereon, owned by such association, company, copartnership or corporation *situate outside of the State of Indiana*, and not directly used in the conduct of the business, with a specific description of each such piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Description.	Location.	For what purpose used.	Assessed value.
Building 55–61 Hudson St.	New York, N. Y..	Rented.....	$275000
Do. 157 Hudson St.	New York, N. Y..	Rented.....	13000
Do. 365 Broadway.	New York, N. Y..	Rented.....	440000
Do. Broome & Elm Sts.	New York, N. Y..	Rented.....	100000
Do. Main & Erie Sts.	Buffalo, N. Y.....	Unoccupied...	69000
Do. Exchange St.	Buffalo, N. Y.....	Rented.....	16800
Do. Canal & Friend Sts.	Boston, Mass.....	Rented	246000
Do. Larned St.....	Detroit, Mich.....	Unoccupied...	10000
Do. Marshall St...	Paterson, N. J.....	Unoccupied...	1400
			1,171200

The foregoing real estate is of the market value of not less than $2,026,747.88.

513 Item 9. This company is the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and is not used in said business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the city of New York, where the company has its principal office and where the said personal property is subject to local taxation.

Item sixth of the foregoing report contains a description of the real estate situate outside of the State of Indiana which was owned

by the company on the first day of April, 1901, and which is not, and during the year then ending was not, used in the conduct of, or in connection with, the express business, but which was applied by the company to uses having no relation whatever to the express business, the same being held by the company as investments
514 and constituting no part of its express plant. The market value of said real estate on April 1, 1901 was not less than $2,026,747.88.

On the first day of April, 1901, this company owned investments in securities which were not, and had never been, within the State of Indiana, but which were kept, and always had been kept, by the company, so long as it had owned the same, in the city of New York where its principal office is situated. No part of said investments was used by the company on the first day of April, 1901, or during the year then ending, in its express business, and the said investments constituted no part of its express plant, but were merely ordinary investments held by the company in like manner, and for the like purposes, as similar investments are held by persons not engaged in the express business. Said investments were as follows: Stocks and bonds of corporations and companies, bills receivable, bonds secured by mortgage upon real estate, and moneys loaned on collateral, which were on the first day of April, 1901, of the market value of not less than $19,259,933.53.

All of said stocks, bonds, mortgages and other personal
515 securities and evidences of indebtedness, are in the possession of this company in the city of New York, and it hereby offers, at any reasonable time, to produce all of said securities in the city of New York for inspection by an authorized member or committee of the board of tax commissioners of Indiana, who may be designated by said board for the purpose of making such inspection.

On the first day of April 1901, this company owned in addition to the property above described, a large amount of real estate which is, and during the year then ending was, used in connection with its express business for offices, stables, and other purposes connected with said business. Said real estate was situated in New York, Illinois, Massachusetts and other States, and was, on that day, of the market value of not less than $3,081,672.06

That all of the real estate hereinbefore mentioned, is subject to local taxation in the various jurisdictions in which the same is situated.

That on the first day of April, 1901, this company was the owner of personal property constituting a part of its plant for the transaction of the express business, consisting of horses,
516 wagons, harnesses, safes, supplies, &c., of the value of $1,659,321.74. Said last mentioned personal property was scattered through a large number of different States and in foreign countries, and was subject to local taxation in the various jurisdictions in which same was situated. That of said amount of $1,659,321.74 about $8,000 in value was situated in the State of Indiana.

As appears from this return, and the foregoing statements therein contained, the American Express Company on the first day of April, 1901, was the owner, and in possession of actual tangible property, situated outside of the State of Indiana, of a market value about equalling the market value of the entire aggregate interests of the associates who are its members, and it claims that the State board of tax commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the as-
517 sociates the actual value of all the real estate belonging to said company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said company and situated outside of said State.

This claim on the part of the company is founded, among other things, upon the opinion of Mr. Chief Justice Fuller in the case of The Adams Express Company against The Ohio State Auditor (165 U. S., 194), and upon the opinion of Mr. Justice Brewer in the case of The Adams Express Company *vs.* Ohio State Auditor (166 U. S., 185), the first of these cases having been followed by the Supreme Court in the case of The American Express Company against Indiana (165 U. S., 255).

518 (*Supplementary Report.*) No. 1.

American Express Company.

Itemized Statement of Mileage in the State of Indiana.

March 31st, 1901.

City, corp'n, or township.	Mileage.	
Allen county.		
Adams twp	6.03	
Jackson twp	4.23	
Jefferson twp	6.05	
Wayne twp	.89	
		17.20
Bartholomew county.		
Columbus twp	3.30	
Clay twp	1.16	
Flat Rock twp	2.57	
Hamereek twp	6.58	
Columbus city	1.69	
		15.30
Benton county.		
Bolivar twp	.71	
Center twp	13.30	
Oak Grove twp	9.64	
Richland twp	2.24	
Union twp	6.01	
York twp	4.34	
Earl Park corp	2.68	
Fowler corp	1.47	
Oxford twp	.48	
		40.87
Boone county.		
Center twp	7.76	
Eagle twp	5.17	
Jefferson twp	1.60	
Jackson twp	4.23	
Sugar Creek, twp	6.06	
Worth twp	4.52	
Washington twp	1.14	
Jamestown corp	.42	
Lebanon corp	1.19	
Thorntown corp	.63	
Zionsville corp	.69	
Marion city	5.35	
		38.76
Carroll county.		
Clay twp	3.86	
Deer Creek twp	5.74	
Delphi city	1.43	
Jefferson twp	6.07	
Madison twp	3.48	
Tippecanoe twp	4.17	
		24.75
Clark county.		
Carr twp	5.96	
Wood twp	5.84	
Silver Creek twp	.99	
		12.79
Clay county.		
Brazil twp	2.06	
Dick Johnson twp	8.50	
Van Buren twp	4.03	
Brazil city	.64	
Carbon corp	.69	
		15.92
Clinton county.		
Center twp	2.19	
Jackson twp	4.07	
Kirklin twp	6.52	
Owen twp	1.15	
Perry twp	3.14	
Frankfort city	1.37	
Union city	4.31	
Rose twp	4.05	
Colfax corp	.73	
Kirklin corp	.52	
Rossville corp	.60	
		28.65

City, corp'n, or township.	Mileage.	
Dearborn county.		
Harrison twp	5.27	
Jackson twp	3.92	
Lawrenceburg twp	4.26	
Miller twp	3.07	
Manchester twp	.64	
York twp	7.68	
W. Harrison corp	.98	
		25.82
519 **Delaware county.**		
Center twp	3.77	
Liberty township	5.97	
Mt. Pleasant twp	4.77	
Muncie corp	2.29	
Salem twp	3.74	
		20.54
Decatur county.		
Clay twp	9.60	
Adams twp	5.01	
Clinton twp	5.18	
Newpoint corp	.55	
Salt Creek twp	4.35	
Sand Creek twp	8.47	
Washington twp	19.20	
Westport twp	1.09	
Greensburg city	1.29	
		54.74
Elkhart county.		
Cleveland twp	3.25	
Concord twp	6.29	
Elkhart twp	5.58	
Jackson twp	6.13	
Oscola twp	.74	
Elkhart city	2.61	
Goshen twp	2.04	
		26.64
Fayette county.		
Connersville twp	3.09	
Columbia twp	5.96	
Harrison twp	4.03	
Connersville city	1.17	
		14.16
Floyd county.		
New Albany	6.65	
New Albany city	2.37	
		9.02
Fountain county.		
Cain twp	6.63	
Van Buren twp	11.31	
Troy twp	4.18	
Logan twp	1.49	
Shawnee twp	5.20	
Mill Creek twp	8.35	
Attica city	1.26	
Veedersburg corp	1.50	
Covington corp	1.50	
		41.42
Franklin county.		
Ray twp	3.52	
Laurel twp	5.18	
Metamora township	5.07	
Brookville twp	10.33	
Highland twp	1.69	
White Water twp	4.53	
Laurel corp	.30	
Brookville corp	.70	
		31.32

City, corp'n, or township.	Mileage.	
Grant county.		
Washington twp.	2.82	
Pleasant twp.	2.93	
Center twp.	2.07	
Mill twp.	3.70	
Fairmount twp.	3.59	
Fairmount corp.	1.53	
Jonesboro corp.	.45	
Marion city.	2.85	
		19.94
Green county.		
Jackson twp.	8.10	
Taylor twp.	4.25	
Richland twp.	6.00	
Grant twp.	4.28	
Fairplay twp.	5.65	
Stockton twp	6.89	
Bloomfield city.	1.40	
		36.57
Hamilton county.		
Clay twp.	4.50	
Carmel twp.	.75	
Washington twp.	6.58	
Westfield twp.	.92	
Adams twp.	3.44	
Sheridan twp.	.75	
		16.94
Hancock county.		
Vernon twp.	6.38	
Brown twp.	10.21	
Jackson twp.	1.17	
Center twp.	7.15	
Buck Creek twp.	6.11	
Fortville twp.	.61	
		31.63
520 **Hendricks county.**		
Washington twp.	7.47	
Lincoln twp.	10.88	
Middle twp.	7.36	
Union twp.	8.39	
Eel River twp.	8.27	
Center twp.	5.90	
Marion twp.	2.71	
Clay twp.	3.72	
Browns twp.	.53	
Brownsburg corp.	1.09	
Danville corp.	.63	
		56.95
Henry county.		
Blue River twp.	5.58	
Prairie twp.	2.45	
Henry twp.	6.40	
Greensburg twp.	8.49	
Wayne twp.	5.81	
Knightstown corp.	.82	
Mooreland corp.	.32	
New Castle city.	.01	
		29.88
Jasper county.		
Kankakee twp.	3.80	
Wheatfield twp.	2.78	
Walker twp.	4.78	
Keener twp.	.02	
Union twp.	14.46	
Hanging Grove, twp.	3.12	
Mariol twp.	8.37	
Rensselaer twp.	1.17	
Newton twp.	2.99	
		41.49
Jennings county.		
Center twp.	2.60	
Sand Creek twp.	5.62	
No. Vernon twp.	.59	
		8.81
Johnson county.		
Franklin twp.	3.87	
Needham twp.	5.74	
Clark twp.	.42	
Hensley twp.	7.05	
Nineveh twp.	1.34	
Franklin city.	1.55	
		19.97

City, corp'n, or township.	Mileage.	
Knox county.		
Vincennes	.26	
Vincennes twp.	6.59	
		6.85
Kosciusko county.		
Van Buren twp.	5.07	
Plain twp.	5.46	
Wayne twp.	5.51	
Clay twp.	4.62	
Lake twp.	4.80	
Milford corp.	.32	
Leesburg corp.	.50	
Claypool corp.	.39	
Silver Lake corp.	.21	
Warsaw city.	.90	
		28.38
Lake county.		
Hobart twp.	9.32	
Calumet twp.	11.81	
North twp.	7.68	
St. Johns twp.	12.97	
Cedar Creek twp.	11.15	
Lowell twp.	.55	
Wt. Creek twp.	.97	
Hanover twp.	6.02	
Hammond city.	4.98	
		65.45
Laporte county.		
Dewey twp.	15.14	
Case twp.	8.55	
Clinton twp.	5.82	
New Durham twp.	5.58	
Westville twp.	.50	
Coal Springs twp.	6.75	
Springville twp.	5.90	
Center twp.	4.64	
Scipio twp.	5.94	
Noble twp.	5.94	
Hanna twp	4.82	
Springfield twp.	1.03	
Michigan twp.	3.96	
Michigan city.	5.49	
La Porte twp.	1.31	
		81.35
Lawrence county.		
Marion twp.	8.29	
Shawswick twp.	11.38	
Marshall twp.	9.87	
Indian Creek twp.	.50	
Perry twp.	7.83	
Bedford city.	2.11	
Mitchell corp.	1.07	
		41.05
521 **Madison county.**		
Union twp.	3.65	
Anderson twp.	9.50	
Fall Creek twp.	6.26	
Green twp.	1.85	
Van Buren twp.	4.16	
Monroe twp.	5.43	
Lafayette twp.	5.83	
Adams twp.	7.72	
Ingalls corp.	.80	
Pendleton corp.	.43	
Summitville corp.	.51	
Alexandria corp.	1.34	
Anderson corp.	1.67	
Anderson city.	2.87	
		52.02
Marion county.		
Center twp.	4.77	
Washington twp.	8.60	
No. Indianapolis twp.	.75	
Haughville twp.	1.30	
Wayne twp.	18.96	
Warren twp.	9.46	
Franklin twp.	8.49	
Pine twp.	6.27	
Lawrence twp.	7.54	
Indianapolis city.	21.24	
		87.38

City, corp'n, or township.	Mileage.
Monroe county.	
Clear Creek twp	6.56
Perry twp	6.54
Bloomington twp	1.60
Richland twp	6.28
Bean Blossom twp	6.81
Bloomington city	1.43
	29.22
Montgomery county.	
Clark twp	3.81
Ladoga twp	.87
Scott twp	1.72
Union twp	20.78
Madison twp	6.07
Walnut twp	6.33
Wayne twp	6.37
Crawfordsville city	2.80
New Ross corp	.51
Waynetown corp	.57
	49.83
Morgan county.	
Jackson twp	6.17
Washington twp	5.80
Martinsville corp	.58
	12.55
Newton county.	
Jefferson twp	1.43
Lincoln twp	6.72
McClellan twp	2.49
Beaver twp	6.49
Washington twp	2.93
Iroquois twp	10.83
Grant twp	7.19
Morocco twp	.92
Brook twp	.45
Goodland twp	1.01
Colfax twp	3.82
Jackson twp	6.02
	50.30
Orange county.	
No. East twp	4.06
Orleans twp	8.06
Paoli twp	6.75
French Lick twp	6.20
Orleans corp	.87
Paoli corp	1.53
	27.29
Owen county.	
Wayne twp	5.00
Harrison twp	3.72
Taylor twp	2.12
Gosport corp	.35
	11.19
Parke county.	
Florida twp	10.45
Jackson twp	1.07
Green twp	5.96
Washington twp	6.43
Penn twp	3.41
Reserve twp	10.65
Wabash twp	6.80
Liberty twp	6.81
Rosedale corp	.61
	52.19
Porter county.	
Pleasant twp	3.22
Pine twp	4.76
Portage twp	4.19
W't Chester twp	8.09
	20.26
Posey county.	
Bethel twp	5.91
Robert twp	10.35
Smith twp	4.38
Harmony twp	3.45
Poseyville corp	.28
New Harmony corp	.36
	24.83

Pulaski county.	
Salem twp	5.42
White Post twp	5.99
Cass twp	6.04
Francisville corp	.50
	17.95

City, corp'n, or township.	Mileage.
Putnam county.	
Jackson twp	5.62
Franklin twp	11.42
Russell twp	6.01
Floyd twp	2.17
Marion twp	4.00
Greencastle twp	13.89
Madison twp	6.45
Cloverdale twp	5.44
Warren twp	6.54
Monroe twp	6.10
Cloverdale corp	.40
Bainbridge corp	.18
Roachdale corp	.29
Greencastle city	.44
	68.93
Randolph county.	
Wayne twp	4.06
White River twp	9.19
Monroe twp	5.46
Greensburg twp	6.91
Washington twp	5.12
West River twp	5.54
Farmland corp	.28
Parker city	.82
Winchester corp	1.01
Union City corp	1.04
Lynn corp	.76
Bronson corp	.27
Nettie Creek twp	5.05
	45.51
Ripley county.	
Adams twp	8.18
Laughrey twp	.58
Batesville corp	1.00
	9 76
Rush county.	
Ripley twp	5.65
Posey twp	1.84
Jackson twp	2.80
Rushville twp	7.16
Anderson twp	6.07
Carthage corp	1.40
Rushville city	.63
	25.55
Sullivan county.	
Cass twp	2.37
Hamilton twp	8.22
Gill twp	10.25
	20.84
Shelby county.	
Noble twp	1.08
Liberty twp	4.05
Shelby twp	2.26
Addison twp	5.16
Brandywine twp	5.18
Sugar Creek twp	6.39
Morral twp	3.76
Shelbyville corp	.60
	28.48
Starke county.	
Railroad twp	5.73
	5.73
St. Joseph county.	
Harris twp	4.18
Clay twp	4.59
So. Bend city	1.47
	10.24
Tippecanoe county.	
Lauramie twp	6.63
Sheffield twp	2.79
Wea twp	7.42
Fairfield twp	5.00
Randolph twp	5.90
Union twp	5.41
Tippecanoe twp	5.86
Battle Ground twp	.77
Clark's Hill corp	.65
Lafayette city	4.29
	44.72

City, corp'n, or township.	Mileage.	
Union county.		
Center twp.	3.80	
Harrison twp.	5.00	
		8.80
Vanderburg county.		
Armstrong twp.	4.07	
Germantown twp.	4.97	
Center twp.	1.93	
Pigeon twp.	.78	
Evansville city.	1.14	
		12.89
Vermilion county.		
Holt twp.	18.13	
Highland twp.	11.06	
Eugene twp.	6.09	
Vermilion twp.	6.73	
Clinton twp.	2.06	
Cayuga corp.	.98	
Newport city.	.24	
Clinton city.	.68	
		45.97
Vigo county.		
Nevins twp.	10.94	
Otter Creek twp.	8.12	
Harrison twp.	5.62	
Sugar Creek twp.	4.41	
Fayette twp.	2.92	
Terre Haute city.	1.33	
		31.84
Wabash county.		
Pleasant twp.	3.17	
Chester twp.	7.04	
Lagro twp.	5.34	
Noble twp.	5.04	
Waltz twp.	.35	
Liberty twp.	7.09	
No. Manchester corp.	.58	
Wabash city.	2.76	
		31.37

City, corp'n, or township.	Mileage.	
Warren county.		
Pike twp.	2.06	
Steuben twp.	4.08	
Jordan twp.	2.08	
Adams twp.	6.02	
Warren twp.	6.73	
Washington twp.	.41	
Mound twp.	4.97	
		26.34
Washington county.		
Polk twp.	3.10	
Pierce twp.	3.58	
Washington twp.	13.34	
Vernon twp.	2.65	
Brown twp.	1.61	
Saltillo twp.	1.28	
Salem corp.	.96	
Campbellsburg corp.	1.14	
		27.66
Wayne county.		
Jefferson twp.	2.12	
Jackson twp.	4.88	
Washington twp.	5.79	
Milton corp.	.50	
Hagerstown corp.	.18	
Cambridge city.	.86	
Boston twp.	4.10	
Wayne twp.	3.80	
Richmond city.	1.30	
		23.53
White county.		
Prairie twp.	5.63	
Big Creek twp.	6.06	
Honey Creek twp.	7.51	
Monon twp.	14.37	
Union	4.41	
Brookston corp.	.50	
Reynolds corp.	.74	
Monon corp.	1.21	
Monticello corp.	1.58	
		42.01

524 & 525 Item 7. Mortgages upon the whole or any part of its property, together with the dates and amount thereof, and all bonded indebtedness whether secured by mortgage or otherwise, viz:

Mortgage or bond.	Date.	Amount.

None.

≠ Including 4,363.38 miles over which National Express Company so transports merely as agent of and for account of this company.

o Including 3,948.68 miles over which National Express Company so transports merely as agent of and for account of this company.

Item 8. *a*. Total length of its lines or routes over which it transports merchandise, freight or express matter ≠ ..... 164,019.85 miles.

b. Total length of such lines or routes as are *outside* of the State of Indiana o ..... 161,756.70 miles.

c. Total length of its lines or routes within each of the counties and townships *in* the State of Indiana, viz:

Counties. *	Miles.	Hdths.
Allen	17	20
Bartholomew	15	30
Benton	40	87
Boone	38	76
Carroll	24	75
Clark	12	79
Clay	15	92
Clinton	28	65
Dearborn	25	82
Delaware	20	54
Decatur	54	74
Elkhart	26	64
Fayette	14	16
Floyd	9	02
Fountain	41	42
Franklin	31	32
Grant	19	94
Green	36	57
Hamilton	16	94
Hancock	31	63
Hendricks	56	95
Henry	29	88
Jasper	41	49
Jennings	8	81
Johnson	19	97
Knox	6	85
Kosciusko	28	38
Lake	65	45
Laporte	81	35
Lawrence	41	05
Madison	52	02
Marion	87	38
Monroe	29	22
Forward	1071	78
Forward	1071	78
Montgomery	49	83
Morgan	12	55
Newton	50	30
Orange	27	29
Owen	11	19
Parke	52	19
Porter	20	26
Posey	24	83
Pulaski	17	95
Putnam	68	93
Randolph	45	51
Ripley	9	76
Rush	25	55
Sullivan	20	84
Shelby	28	48
Starke	5	73
St. Joseph	10	24
Tippecanoe	44	72
Union	8	90
Vanderburg	12	89
Vermilion	45	97
Vigo	31	84
Wabash	31	37
Warren	26	35
Washington	27	66
Wayne	23	53
White	42	01
	1848	45

And the following lines or routes over which National Express Company so transports merely as agent of and for account of this company.

Adams	16.76
Allen	28.21
Clinton	23.26
Elkhart	5.34
Fountain	25.12
Grant	25.69
Huntington	8.10
Howard	26.74
Kosciusko	20.30
Lake	34.56
Laporte	36.17

Counties. *	Miles. Hdths.	Counties. *	Miles. Hdths.
Marshall	22.53	Tippecanoe	6.85
Montgomery	15.90	Vermilion	6.85
Park	.38	Wells	15.75
Porter	32.25	Whitley	18.38
St. Joseph	30.72		
Starke	15.04	Total	2263.15

* Townships. See statement herewith.

STATE OF NEW YORK, }
County of New York, } ss:

Francis F. Flagg, * vice president of the American Express Company, being duly sworn on oath say- that the foregoing statements and schedules contain and are a full, true, correct statement of the matters and things which are required to be returned to the auditor of State, under the provisions of the act of March 6, 1893.

FRANCIS F. FLAGG,
Vice President.

Subscribed and sworn to before me, this 24th day of May, 1901.

[SEAL.]

GEO. E. PARKER,
Notary Public (7), *New York County.*

* This affidavit may be made by such officers of the company as may have knowledge of the matters contained herein.

[Endorsed:] Return of American Express Company. April 1 1901. Filed May 31, 1901. Wm. H. Hart, auditor of State.

526 COMPLAINANT'S EXHIBIT No. 18. Rowland Evans, Special Examiner.

1901.

(From page 253.)

Express companies.

Assessment and valuation of the personal property within the State of Indiana (exclusive of real estate, structures, machinery, fixtures, and appliances subject to local taxation) of express companies.

Express companies.	Miles.	Per mile.
Adams Express Company	1,637.37	$350.00
American Express Company	1,848.45	450.00
National Express Company	414.70	450.00
Pacific Express Company	435.95	75.00
Southern Expres- Company	10	150.00
Southern Indiana Express Company	150.27	50.00
United States Express Company	1,546.30	150.00
Wells, Fargo Express Company	160	150.00

527 (From page 735.)

Wells, Fargo & Company Express Company.

The petition of the Wells, Fargo & Company Express Company for a modification of its assessment as fixed by the board at its first session this year, is taken up. C. W. Stockton, assistant superintendent, Chicago, Illinois, appears and makes the following statement.

Mr. STOCKTON: We feel like we want to pay all that is coming to the State. We think your assessment is proportionately high. In the first place our company, as you possibly know from the documents filed with the State, is organized for the express and banking business. We are a corporation organized under the laws of Colorado, and engaged in both express and banking. We have four banks, one at New York, one at San Francisco, one at Portland, Oregon and one at Salt Lake City. Of our capital stock of $8,000,000 very much the larger proportion is devoted to the banking
528 business. According to the statement of our vice-president and manager at New York, the exact proportion at the time of

our statement in April devoted to the banking business, the capital employed, was $7,329,000. The assets held by these various, real estate mortgages, their personal property, &c., are subject to taxation and are assessed in the respective States where they are located. All that property is assessed at the point where located. Now, in addition to this the express department owns real estate, $1,225,000. On present values then our running equipment amounts to $1,020,000, and with which we do express business. Of this amount of equipment all of it, and all this real estate is assessed, excepting about $500 worth of property which is listed to the auditor of State, all of it is assessed outside of the State of Indiana. And even taking the total amount of our capital that is used in the express business, regardless of the fact that it is established elsewhere, and dividing it by the total mileage of the company's line, the average per mile total valuation would be $52.60 a mile. The State of Iowa has a very similar law to that of Indiana. They have an executive council composed very much as this is. We have a greater mile-
529 age in Ohio than in Indiana. Upon these facts being represented to them and the statements filed, or upon the figures I have given you, they made our tax $25 per mile in the State of Iowa.

Mr. WINGATE: Their law is very different from ours. They list property there at one-fifth its value. We list it at the true cash value here. Their rate is very much higher than ours for that reason.

Mr. STOCKTON: On the other hand they include the tangible property in the mileage estimate. You do not. You tax separately for the tangible property. Their rate is considerably higher than the rate in Indiana. The fact is that a mile of express territory *is* in one State is not the same as a mile in another State. The express business is purely a business between towns. For instance, an express company has two offices, and it will only do one-third as much business as one having three offices.

Governor DURBIN: Are you on any other road except the Erie in this State?

530 Mr. STOCKTON: No other. We run through the lean territory of the State. We have on our line the five principal towns, Crown Point, Rochester, Decatur, Huntington and Hammond, with an aggregate population of not quite 42,000 people. Now, compare that with the population of the five principal towns reached by the United States Express Company, Indianapolis, Evansville, Fort Wayne, Terre Haute and South Bend, aggregating 345,000 people, more than ten times the population reached by the Wells, Fargo Company. Take the Pacific, they have Fort Wayne, Logansport, Lafayette, Wabash and Huntington, showing an aggregate population of 97,000 people, more than three times the population of our principal towns, and yet our assessment is made twice the amount of theirs.

Governor DURBIN: What about through express matter, carried through the State.

Mr. STOCKTON: Well, through express matter is entirely different matter. If you take one view of it the State has no right to assess it because it is inter-state business. I do not understand that this law is intended to reach a business which the State of In-
531 diana could not reach otherwise.

Governor DURBIN: On that basis then the telegraph companies could not be taxed by reason of messages originating out of the State and passed through the State. They might occupy Indiana territory and do no local business, and say we had no jurisdiction.

Mr. STOCKTON: I have a distinct idea that you cannot tax them if they do no local business. I have never seen any decision covering that. I am not lawyer enough to argue that point with you.

Mr. HUNT: What is the capital stock of your company?

Mr. STOCKTON: $8,000,000. That is our total capital. We handle both express and banking business under our charter. Our total capital at the present time runs over $8,000,000 on account of the surplus.

Mr. HUNT: You claim that your capital represented in the express business is only $1,000,000.

532 Mr. STOCKTON: I don't claim anything of the kind. I claim we have in running equipment and real estate, and cash pertaining to the express business, something over $2,000,000. A mile of Indiana territory is not the same as a mile of New York or Pennsylvania territory. You can readily see on a division pro rating in the mile basis of road would not be fair. Wells, Fargo and Company have always paid their taxes to the State of Indiana and have never litigated the question. We have paid on a valuation of $100 per mile for a long time rather than make a fuss about the matter. It wasn't a matter of such very great concern. We *we* feel now since our assessment has been raised that we ought to bring these facts before the commission that they may understand the injustice which has been previously done us. I personally know in some instances of taxes being assessed against express companies that were in some degree too small. But I do not think we are in that catalogue at the present time.

Mr. WINGATE: What do you think it ought to be?

533 Mr. STOCKTON: I think in perfect fairness our assessment should not be over $50 a mile. I think that would be fair to us and fair to the State of Indiana. If we did a large business in the State of Indiana we would feel in a better position to pay a larger assessment. We had the Wabash road in Indiana we would not kick on $150 a mile because the territory is good local territory. I file with you the following petition.

To the honorable the board of tax commissioners, Indianapolis, Indiana:

Your petitioner respectfully represents that the valuation of the property of Wells, Fargo and Company express, in the State of Indiana, at the rate of $150 per mile, exclusive of the tan*ig*ble property

owned by the company in the State is excessive and unjust, and begs to offer as reasons for the reduction of said valuation:—

Wells, Fargo & Co. besides being engaged in the express business is also, pursuant to the terms of the acts under which it was
534 incorporated engaged in the banking business, having banks at New York, San Francisco, Salt Lake City, Utah, and Portland, Oregon. The capital employed by Wells, Fargo & Co. in its banking business at these banks amounts to the sum of $7,329,000. The assets held by the various banks consist of real estate, bonds, mortgages and other personal property and are subject to liability of the banks of Wells, Fargo & Co. to their depositors. All of the said real estate, bonds, mortgages and other personal property are assessed and taxed to the respective banks at the places where the same are located and held. No portion of the real estate or other property owned by Wells, Fargo & Co. or used in its general business is included in the assets of property above mentioned. In addition Wells, Fargo & Co. express, own real estate situated outside of the State of Indiana, to the approximate value of $1,225,000. The approximate value of the running equipment of Wells, Fargo & Co. express, in the conduct of express business, amounts to $1,020,000 all of which equipment with the exception of about $500 which we have specifically mentioned in our annual report to the auditor
535 of State, is situated outside of the State of Indiana; all such real estate and running equipment is assessed in State where located.

Your honorable body will therefore perceive that the pro rate division of the capital actually employed in the express business of Wells, Fargo and Co. based upon actual mileage of the company, including all of its routes, would show an average of $52.60 per mile, including the real estate and running equipment which is already taxed in the respective States in which it is located.

The State of Iowa, under a law very similar to that of Indiana now assesses Wells, Fargo and Company at the rate of $25 per mile, after having full reports and taking into consideration the facts above stated. You will appreciate the fact that our line in Indiana runs through the lean district of the State, and includes less territory of real value to express companies, than those of any other company doing business within the State. We reach no large cities in the State of Indiana and have only a small mileage and a number of small offices, and at most of these the business is divided with other express companies. It is therefore manifestly unjust to
536 approximate in our assessment, the valuation assessed to other express companies in Indiana. It must be understood that the express business is done not within any single towns, but from one town to another. It will readily be seen therefore that an express company having three offices would do twice as much business as one having only two, the increase in business being in progressive ratio upon the increase of the number and size of offices reached.

Our property has been valued at equal to that of the United States

Express Co., which has more than nine times the mileage and number of offices of Wells, Fargo & Co. The population of the five principal towns reached by the United States Express Co. viz., Indianapolis, Evansville, Fort Wayne, Terre Haute and South Bend, aggregating 345,958, or more than eleven times that of the five principal towns reached by Wells, Fargo & Co. viz., Crown Point, Rochester, Decatur, Huntington and Hammond, aggregating 31,766.

You have assessed our valuation at double that of the Pacific Express Co., which has nearly three times as much mileage as Wells,
Fargo & Co., and more than double the number of offices.
537 The five principal towns represented by the Pacific Express
Co., viz., Ft. Wayne, Logansport, Lafayette, Wabash and Huntington, show an aggregate population of 97,544, or more than three times the population of the respective towns reached by this company. It should also be borne in mind that Wells, Fargo & Co., have paid an assessment of $100 per mile, without murmuring, and that we have made no effort to contest the law on which this assessment is based, while other express companies resisted the payment of same.

As a matter of absolute fairness, our assessment should not exceed $50 per mile, and while we have for sometime paid doublt that amount without murmuring, we feel that your honorable body should now relieve us of this burden, by reducing our assessment to a reasonable and equitable valuation.

It will readily be perceived that the valuation upon a mileage basis will work to the detriment and injury either of the express company or to some State through which its lines pass.

If, for instance, the *pro rata* valuation per mile be $150., and the
line be actually worth $50. per mile in Indiana, and $200 per
538 mile in New York, it appears certain that upon the average
assessment either the State of New York must assess below the real value, in order to allow Indiana to assess above it, or assessing at real value, tax the express company upon values already assessed in Indiana.

539 (From page 783.)

The Southern Express Company.

The matter of the petition of the Southern Express Company is taken up, and the following affidavits filed in connection therewith:

STATE OF ILLINOIS, }
Cook County, } *ss:*

F. M. Trissal, being duly sworn upon his oath, states that he is an attorney for the Southern Indiana Express Company and familiar with its affairs; that the annual report to the auditor of State for the year 1901 was prepared by him; that by the statement therein made

to the effect that its original capital was ten thousand dollars; but had since been increased to fifty thousand dollars, it was not meant or intended to state that such increase had actually been made before April 1st, 1901, but he says that, in fact, such increase
540 was actually made about May 1st, 1901.

He further states that said company does business only on the line of the Southern Indiana Railway Company, and was created as an instrumentality of said railway company, to enable it to perform its duties as a common carrier, by affording express facilities to the public; that the increase of capital aforesaid was made for the sole purpose of giving indemnity and a guaranty of its solvency to the public and to the connecting carriers of express matter with which it is seeking to do business, and to get the full benefit of the provisions of the act found in page 149 of the acts of the Indiana legislature of 1901, that went into force May 16, 1901, and that said increased capital has not, in fact, up to this date been employed or used in its business, and is only set apart as a reserve fund for the purposes aforesaid.

F. M. TRISSAL.

Subscribed and sworn to before me this thirteenth day of August, 1901.

[SEAL.] JOHN C. JACOBS,
Notary Public.

541 STATE OF ILLINOIS, } ss:
Cook County, }

Charles F. Weinland, being duly sworn upon his oath, states that he is the secretary of the Southern Indiana Express Company, and that he has charge of the accounts and records thereof, and that of his personal knowledge the increase of its capital from ten thousand dollars to fifty thousand dollars was authorized on January 21st, 1901, but in fact was made after April 1st, and May 1st, 1901; that the gross earnings and income of said company from April 1, 1900, to April 1, 1901, was three thousand, six hundred, seven dollars and twenty five cents, and the actual expense of carrying on its operations during the same period was three thousand seven hundred ninety-two dollars and eighty cents. He further states that the value of all the tangible property owned by said company on the 1st day of April, 1901, did not exceed one thousand dollars.

542 CHARLES F. WEINLAND.

Subscribed and sworn to before me this thirteenth day of August, 1901.

[SEAL.] JOHN C. JACOBS,
Notary Public.

543 (From page 794.)

The American Express Company.
The National Express Company.
The Merchants Despatch Transportation Company.
The Indianapolis Union Railway Company.

The petitions of the above named companies for a modification of their assessments as fixed by the board during the first 20 days of the present annual session *is* taken up. Edward Daniels appears before the board and makes the following statements:

Mr. DANIELS: The situation with reference to the express company is *par*-tically the same as last year. I have returned a protest similar to that of last year, for each of those two companies.

544 (From page 791.)

Southern Express Company.

The petition of the Southern Express Company for a modification of its assessment as heretofore fixed by the board is again taken up. Senator Joseph Shea makes the following statement concerning said assessment.

Senator SHEA: The Southern Indiana Express Company was created about four years ago for the purpose of doing business along the line of the Southern Indiana railway. It does business only along the line of that road. There was some legislation during the last session of the General Assembly, which was designed to enable this company to carry on its business with other companies. The value of this property, the Southern Indiana Express Company, depends on the validity of that act of the last General Assembly, which is now being litigated in the courts. Unless that act is valid, and can be enforced this property is of no value, because we can-
545 not do business with other express companies and discharge our duties to the public. We feel, therefore, that this increase is not justified by the facts, and we feel it ought to be carried on the same basis as heretofore, at $10. per mile rather than $50.

Capt. HART: You operated the business with a deficit last year.

Senator SHEA: Yes, we have carried on the business with a deficit. The Southern Indiana Express Company is all owned by the Southern Indiana railway.

546 (From page 846.)

Wells, Fargo & Company Express Company.

In the matter of the petition of the Wells, Fargo & Company Express Company, for a modification of its assessment as heretofore fixed by the board, during the first 20 days of its present annual session, it is

Ordered, that the prayer of the petition be granted, and the assessment of said company, be, and the same is hereby fixed at $100. per mile.

547 (From page 856.)

The National Express Company.

In the matter of the petition of the National Express Company for a modification of its assessment as fixed by the board during the first twenty days of its present annual session, it is,

Ordered, that the prayer of the petition be not granted, and the assessment of said company be and remain as fixed by the board during the first twenty days of its present annual session.

548 (From page 856.)

The American Express Company.

In the matter of the petition of the American Express Company for a modification of its assessment, as fixed by the board during the first twenty days of its present annual session, it is

Ordered, that the prayer of the petition be not granted, and the assessment remain as fixed by the board during the first twenty days of its present annual session.

549 (From page- 787 & 789.)

The National Express Company.

The following protest from the National Express Company is made a part of this record:

550 To the honorable the State board of tax commissioners of the State of Indiana:

The National Express Company respectfully protests against the preliminary valuation and assessment by your honorable body at its session in 1901, of the property treated as this company's property in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450 per mile of the 414.70 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto:

551 (2.) Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the con-

stitution of the State of Indiana and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana.

(3.) Because the method of procedure adopted by your honorable body in your said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and is in derogation of the rights privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana:

552 (4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purpose of taxation:

(5.) Because since the 1st day of January 1901 continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1901 duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal has been taken to your honorable body; all of which property so assessed is really owned by the American Express Company, and is in this company's possession only as its agents;

(6.) Because the valuation and assessment as made by the local taxing officers in 1901, in the State of Indiana of this company's property in that State, so possessed by it as the agent of the American Express Co. from which no appeal has been taken, is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local

553 officers as that which is to be valued and assessed by your honorable board under the statutes of the State of Indiana in view of the fact as shown by its report filed with the auditor of state of the State of Indiana, in the year 1901, that all of its lines and routes in Indiana are operated by it exclusively and only for the benefit of the American Express Company of which it is agent.

(7.) Because under the showing made by this company in its said verified report made pursuant to the statutes in that be-

554 half which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1st, 1901, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana.

(8.) Because as was shown and is shown by this company's said report above mentioned it has a total mileage of lines or routes of

1,282.10 miles that by its said report this company is shown to have had on April 1st, 1901, a capital of the face value of $500,000., then worth on the market a 100 cents on the dollar, or $500,000., and no more; and this company now shows that in none of these respects has the truthfulness of said report been called in question by any testimony or evidence heard or received by your honorable
555 body, and that said showing as to each of said items was and is in fact true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1901, other than said tangible property which was so valued and assessed by the local taxing officers in Indiana, could not be in excess of $30. per mile.

Wherefore the National Express Company respectfully asks your honorable board to set aside its preliminary assessment against this company in Indiana, for 1901, of $450., per mile upon said 414.70 miles of lines or routes and make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $30. per mile for said 414.70 miles of lines or routes in the State of Indiana; and that this protest be received, filed and considered by your honorable body.

Respectfully submitted.

NATIONAL EXPRESS COMPANY,
By BAKER & DANIELS, *Attorneys.*

Indianapolis, Indiana, August 20, 1901.

556 (From page 789.)

The American Express Company.

The following protest is filed with reference to the assessment of the American Express Company:

557 To the honorable the State board of tax commissioners of the State of Indiana:

The American Express Company respectfully protests against the preliminary valuation and assessment made by your honorable body at its session in 1901, of the property of this company in the State of Indiana other than its tangible property which is assessed for taxation by the local taxing officers of said State. Your assessment hereby protested against is $450 per mile of the 1848.45 miles of lines and routes of this company in this State.

The following are severally the grounds upon which this company protests:

(1.) Because the statute under which said assessment is made is in contravention of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th*n* amendment thereto;

558 (2.) Because the statute under which said assessment is made is in contravention of section 22 of article 4 of the constitution of the State of Indiana and of section 1 of article 10 of the constitution of the State of Indiana and of section 23 of article 1 of the constitution of the State of Indiana;

(3.) Because the method of procedure adopted by your honorable body in the said valuation and assessment is in contravention of the provisions of the Constitution of the United States and especially of the inter-state commerce clause thereof and of section 1 of the 14th amendment thereto, and is in contravention of section 22 of article 4 and of section 1 of article 10 and of section 23 of article 1 of the constitution of the State of Indiana, and in derogation of the rights privileges and immunities of this company and of the several holders of its capital interests or shares as guaranteed to it and them respectively by the Constitution of the United States and the constitution of the State of Indiana:

559 (4.) Because said assessment includes property which is not and never has been physically within the State of Indiana and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation:

(5.) Because since the 1ist day of January, 1901 continuously to this date, this company has not had and owned in the State of Indiana and subject to the jurisdiction of that State for purposes of taxation any property whatever except such as has been in the year 1901 duly assessed by the local assessing officers for taxation for that year and from which assessments no appeal, has been taken to your honorable body:

(6.) Because the valuation and assessment as made by the local taxing officers in 1901 in the State of Indiana of this company's property in that State, from which no appeal has been taken, is in excess of the true cash value of all of this company's property in this State in said year as well that required to be assessed by such local officers as that which is to be valued and assess- by

560 your honorable board under the statutes of the State of Indiana.

(7.) Because under the showing made by this company in its verified report filed with the auditor of State of Indiana in 1901 pursuant to the provisions of the statutes in that behalf which was duly accepted by the proper officers of the State and not objected to by any officer of the State of Indiana and the truthfulness of which has not been called in question by any testimony or evidence heard or received by your honorable body and which was and is in fact true, it appears that there was not on April 1st, 1901, and is not now any property of this company in the State of Indiana, or elsewhere, subject to be assessed for taxation purposes by your honorable board under the statutes of Indiana.

(8.) Because as was shown and is shown by this company's verified report above mentioned it has a total mileage of lines or routes of 164,019.85 miles (of these about 35000 miles are in this country

and the remainder made up of water routes, railroad and
561 other routes and lines outside of this country;) that by its said report this company is shown to have had on April 1st, 1901, a capital of the face value of $18,000,000. then worth on the market 150 cents on the dollar or $27,000,000. and no more. That by its said report this company is shown to have had on said April 1st, 1901, real estate without the State of Indiana not used in its express business which was valued for taxation at $— and to have had on said last named date in the State of New York and subject to the jurisdiction of the State of New York for taxation purposes personal property consisting of bonds, stocks, mortgage notes and other like securities of the market value of $19,259,833.50 and that it then had in Indiana 1848.45 miles of lines or routes and that this company's property in the State of Indiana valued and assessed by the local taxing officers in 1901 was assessed for taxation purposes at $17,455. And this company now shows that in none of these respects has the truthfulness of the said report been called in question by any testimony or evidence heard or received by your honorable body and that said showing as to each of said items was and is in fact
562 true; and therefore this company submits that under the directions of the statutes pursuant to which your honorable body assumed to act the valuation and assessment of this company's property in 1901, other than its tangible property which was valued and assessed by the local taxing officers in Indiana, could not be.

(*a.*) In excess of $135.00 per mile even if its said personal property of the value of $19,259,833.53 outside of Indiana and not used in its express business be included in arriving at said value: and

(*b.*) If the value of said personal property outside of Indiana and not used in this company's express business, be, as it should be included, could not be in excess of $30.00 per mile: and

(*c.*) If the mileage other than water and foreign routes be taken as the total mileage and said $19,259,833.53 of value of personal property, outside of Indiana and not used in this company's express business be excluded, as it should be excluded, could not be in excess of $155.00 per mile.

563 Wherefore the American Express Company respectfully asks your honorable board to set aside its preliminary assessment of this company's property in Indiana for 1901, of $450. per mile upon said 1848.45 miles of lines or routes, and to make no assessment thereof; or if this prayer be not granted that your honorable board reduce such assessment to a sum not in excess of $30.00 per mile for said 1848.45 miles of its lines or routes in the State of Indiana; and that this protest be received, filed, and considered by your honorable body.

Respectfully submitted.

AMERICAN EXPRESS COMPANY,
By BAKER & DANIELS, *Att'ys.*

Indianapolis, Indiana.

An adjournment is now taken until Monday, June 16, 1902.

564 INDIANAPOLIS, INDIANA, MONDAY, *June* 16, 1902.

The parties met, Messrs. Baker & Daniels, appearing for the complainant; Hon. William L. Taylor, attorney general, Merrill Moores, Esq., assistant attorney general, and Cassius C. Hadley, Esq., deputy attorney general, appearing in behalf of the defendant.

Stipulation.

It is agreed by the parties for the purposes of this suit that the Commercial and Financial Chronic*al* of New York, a reputable and influential newspaper, reported in its stock report of April, 1901, as respects the market of April 1st, 1901, that there was bid for American Express Company's stock on the New York Stock Exchange, on said April 1st, $202.00 per share, and that there were sales at the latter price of less than 100 shares on that day; that in the same paper's report of the same market for March 31st, 1902, it was stated that there was bid for American Express Company stock
$220. per share, and asked $233. per share, with no sales;
565 that on April 1st, 1902, there was bid for said stock $225. per share and asked $233. per share, with no sales; and that the same paper gave the same report,—$225. and $233,—with no sales, for the remainder of the week, including Friday, April 4, 1902.

The parties further agree that the affidavit of Mr. Francis F. Flagg, dated May 13, 1902, made at the instance of the defendant shall be treated as a part of the evidence in this case.

The said affidavit is now admitted in evidence, marked Exhibit A, and is in the words and figures following to wit:

"STATE OF NEW YORK, }
County of New York, } *ss*:

Francis F. Flagg, being duly sworn says:

I am the second vice president of the American Express Company;

That the number of messengers employed by the American Express Company *as* as follows:—

566 In the United States and Canada..... 1,670

That there are no messengers employed by said company in any other American countries, or in Great Britain and Ireland or on the European continent or on ocean lines or elsewhere.

That the number of employees of all sorts employed by said company is as follows:

In the United States and Canada..... 14,623

This number embraces both joint and exclusive employees and includes those persons who are acting in a joint capacity, as em-

ployees of the American Express Company and of other persons or companies or in other capacities, and who receive compensation not only from the American Express Company but also from other sources.

In Great Britain and Ireland	39
On the European continent	62

The numbers above given of the employees in Great Britain and Ireland and on the European continent are of those persons employed exclusively by the American Express Company.

In addition to the above, there are more than four hundred agents in foreign countries, who render services to the American
567 Express Company for compensation under an arrangement or agreement with said company.

That there are no employees of the American Express Company in other American countries or on ocean lines or elsewhere.

That the number of offices maintained by the American Express Company is as follows:

In the United States and Canada	6,064
In Great Britain and Ireland	3
On the European continent	6

That there are no offices maintained by the American Express Company in other American countries or elsewhere.

That there is no tax in any taxing community specifically imposed upon the "ocean mileage" of the American Express Company as such.

(Signed) FRANCIS F. FLAGG.

Sworn to before me this 13th day of May, 1902.

(Signed) HENRY P. WILKINSON,
[SEAL.] *Notary Public, 61, Kings County.*

Certificate filed in New York county."

568 Also at the instance of the defendant, the following stipulation was introduced in evidence, marked Exhibit B:

"In the Circuit Court of the United States for the District of Indiana.

JAMES C. FARGO, as President of the American Express Company, v. WILLIAM H. HART, Auditor of State of the State of Indiana.	No. 9620. Chancery.

Come again the parties complainant and defendant by their respective counsel and for all purposes of this suit, it is agreed that

the dividends paid by the American Express Company, mentioned in the pleadings herein, from 1897 to 1900, both inclusive, were three (3) per cent. semiannually upon the $18,000,000. face value of its shares, and in 1901 and to this date they have been four (4) per cent. semiannually upon the $18,000,000. face value of its
569 shares.

BAKER & DANIELS,
Solicitors for Complainant.

Indianapolis, June 16, 1902.

W. L. TAYLOR,
Solicitor for Defendant."

570 Also at the instance of the defendant, the following stipulation is introduced in evidence, marked Exhibit C:

"In the Circuit Court of the United States for the District of Indiana.

JOHNSTON LIVINGSTON, as President of the National Express Company,
v.
WILLIAM H. HART, as Auditor of State of the State of Indiana.
} No. 9621. Chancery.

Come the parties, the complainant by Baker & Daniels, his solicitors, and the defendant by William L. Taylor, attorney general, and the parties now stipulate, to be made matter of record in this cause, as follows:

Inasmuch as the said National Express Company conducts an express business in Indiana only as agent of and for the account of the American Express Company, and in the conduct of its express business in Indiana, the said National Express Company uses only
571 property of and belonging to the said American Express Company entrusted to the National Express Company by the American Express Company for such use; and, inasmuch as the value of the miles of lines or routes of the American Express Company in Indiana operated by said last named company in person, for taxation purposes, for the several years involved in this suit, will be determined by this court in chancery cause No. 9620; it is hereby stipulated and agreed that any valuation per mile of said American Express Company's lines or routes in Indiana finally established and adjudged in said cause No. 9620, shall be taken, and in this cause No. 9621 decreed to be the value per mile of the lines or routes of said National Express Company in Indiana and if any change shall be made after appeal or at any other stage of said cause No. 9620, in the value per mile of said American Express Company's said mileage in Indiana, a similar change, and to the same value, shall thereupon be made, by proper entry in this cause, in the value per mile of the

miles in Indiana of the lines or routes of the said National Express Co., just as though each and every step taken in said cause
572 No. 9620 were also taken in this cause and the same result as to value per mile for taxation purpose- reached in this cause that shall be in fact reached in said cause No. 9620.

(Signed) BAKER & DANIELS,
Sols. for Compl't.
W. L. TAYLOR,
Solicitor for Defendant."

573 Also at the instance of the defendant a certified copy of the report of dividends and appraisement of the American Express Company for the year ending October 31st, 1898, made to the State comptroller, for the State of New York, and marked Exhibit D, of this date, shall be considered as in evidence.

Said report is in the words and figures following to-wit:

"Copy.

11-14-'98-75-2500. 18468.

(Page 1.)

Before making out this report, carefully read the notes on page 4.

Report of the American Express Company for the year ending the thirty-first day of October, A. D. 1898, made pursuant to provisions of section (fig.) 182, chap. 908, Laws of 1896.

(Give post-office address of company, street and No.)

65 BROADWAY, *Nov.* 1, 1898.

574 To the comptroller of the State of New York:

Agreeably to law, as treasurer of the above company, I make the following report, viz:

1. This company began business in the State of New York, in the month of November 1859 and 1868.

2. The last report made by this company to the comptroller of the State of New York under the provisions of the above act was made for the year ending October 31st, 1897.

3. Value of real estate and of interest or interests in real property in New York State, and where situated..... ..... $1,405,985.

New York, Albany, Syracuse, Rochester, Buffalo and other places.

4. Organized under the laws of the State of New York.

5. Date of organization of the company, Nov. 5/1859, & Nov. 15/1868.

6. Total authorized capital of company..... $5,300,000
7. Whole number of interests authorized..... 180,000
8. Number of interests outstanding..... 180,000
9. Par value of each interest..... 100
10. Amount paid into the treasury of the company on each interest..... $29.44
575 11. Amount of capital paid in..... $5,300,000
12. Amount of interest upon which dividends were declared..... $18,000,000

13. Date of each dividend declared Jan. 2 1898 & July 1, 1898.

14. Amount of each dividend declared..... $540,000
15. Rate per cent. per annum of dividends..... 6%

16. The business transacted by this company in the State of New York for the year ending October 31st, 1898, was as follows, viz:
(Give nature of business and how carried on.)
Express business.
17. And such business was carried on at the following named place or places:
(Give street and number)
Throughout New York State.

18. Capital employed in New York State..... $2,916,000.

(Preceding line need not be filled out by companies whose capital is all employed in this State.)

as settled and adjusted by the comptroller for year 1891.
19. If not in New York State, where and how employed,
576 In many States.

20. Highest price of sales of stock during the year aforesaid..... %
22. Lowest price of sales of stock during the year aforesaid..... %

CHAS. G. CLARK, *Treasurer.*

STATE OF NEW YORK, }
County of New York, } ss:

On this 1 day of November A. D. 1898 personally appeared before me, a notary public in and for the county of New York, Chas. G. Clark, treasurer of the above-named company, who, being duly sworn according to law, did depose and say, that the foregoing report is just, true and correct according as the accounts stand in the books of the company, and that includes all dividends, whether cash stock script, or of any other character or description, declared by said company during the year ending on the thirty-first day of October, A. D. 1898.

577 CHAS. G. CLARK, *Treasurer.*

Sworn to and subscribed before me, the day and year aforesaid.

G. P. OUSTON,
[L. S.] *Notary Public*, #54.

Notary public or other office should always use a seal.

(Page 2.)

Capital stock.

Report of dividends of the —— Company for the year ending Oct. 31st, 189–.

578 To the State comptroller, Albany, N. Y.

Filed in comptroller's office the — day of —— 189–.

Remarks.

579 22 names and addresses of other companies leased by company making report.

(Page 3.)

(Report and appraisement for year in which no dividend or dividends of less than six per cent. has been declared, as shown by the first page of this report.)

Report of appraisement of the —— Company for the year ending the thirty-first day of October, 189–.

STATE OF NEW YORK, } *ss*:
County of ——, }

On this — day of —— A. D. 189–, before me the subscriber, a notary public in and for the county of —— personally ap-
580 peared —— ——, treasurer, and —— ——, secretary of the above named company, who being by me severally sworn, did say that the amount of capital paid in of said company is $—, and that said company declared no dividend in cash, stock, script, or of any other character or description during the year ending October 31st, 189–, save the dividends herein reported, and that they will with fidelity, according to the best of their knowledge and belief estimate and appraise the capital stock of said company at its actual value in cash, not less, however, than the average price which said stock sold for during said year.

—— ——, *Treasurer.*
—— ——, *Secretary.*

Sworn to and subscribed before me, the day and year aforesai

—— ——,
Notary Publi

581 Office of the —— Company.

—— ——, 189

We the undersigned, being the treasurer and secretary of above named company, do certify that in pursuance of our afore oaths, we have estimated and appraised the capital stock of company at its actual value in cash as follows, viz: — shares a dollars, and — cents per share, amounting in the whole to — dollars.

In witness whereof, we have hereunto set our hands the day year aforesaid.

—— ——, *Treasure*
—— ——, *Secretary*

(The following certificate is attached to the bottom of page 3.)

STATE OF NEW YORK, } ss:
Comptroller's Office, }

ALBANY, *Apr.* 28, 189

I have compared the annexed copy of a capital stock report v the original on file in this department, and I hereby ce
582 the same to be a correct transcript therefrom and of whole thereof.

In witness whereof, I have hereunto set my hand and affixed official seal on the day and year first written.

(Signed) THEO. P. GILMAN,
[SEAL.] *Deputy Comptrolle*

(Page 4.)

Officers of the Company.

—— —— president.
—— —— secretary.
—— —— treasurer.

P. O. address: Street and No. ——.

583 9620.

Capital stock.

Report of dividends and appraisement of the American Express C pany for year ending Oct. 31, 1898.

To the State comptroller, Albany, N. Y.

Filed in comptroller's office the — day of ——. 189–."

584 " *Notes.*

This report should be filed in the State comptroller's office on or before November 15, annually.

The tax based on the report is due Jan. 15. Accounts for the same will be sent from the comptroller's office about Jan. 1.

(Both pages of this blank are to be used in all cases where no dividend has been declared and where the dividends declared do not amount to four per cent. on the whole capital stock. Where the dividends are equal to or greater than six per cent., the first page of this blank when properly filled, will be a sufficient report.)

Whenever no dividend is made or declared, and the stock is appraised at a lower value than the previous year, or no value at all, an explanation of the fact should be made under the head of remarks on page 2.

Railroad companies using this blank for report should always be careful to answer question 22 on page 2.

585 Companies whose dividends are six per cent. or over need not answer questions 20 and 21.

Penalties provided by section 194 of chapter 908, Laws of 1896, will be enforced."

Whereupon the parties rest and the evidence before the examiner is closed.

586 STATE OF INDIANA, } ss:
County of Marion, }

I, Rowland Evans, special examiner, do hereby certify that the above and foregoing is a full, true and correct report of all the testimony and evidence heard and introduced before me under the order of the court, hereinbefore set forth.

ROWLAND EVANS,
Special Examiner.

587 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States within and for said district, do hereby certify that the above and foregoing transcript of the record and evidence in the cause of James C. Fargo as president of the American Express Company against William H. Hart, auditor of State of the State of Indiana, contained in three separate volumes, one of them containing 200 pages, numbered consecutively from 1 to 200 inclusive, and the other two volumes together containing 586 pages, numbered consecutively from 1 to 586 inclusive, is a full, true and complete transcript of

said record and evidence, as the same remain upon the record and files now in my office.

Seal Circuit Court of the United States, District of Indiana.

Witness my hand and the seal of said court at Indianapolis in said district, this 5th day of November, A. D. 1902.

NOBLE C. BUTLER, *Clerk.*

This certificate to be attached at the close of page 586.

N. C. B.

Endorsed on cover: File No. 18726. Indiana C. C. U. S. Term No. 154. James C. Fargo, as president of the American Express Company, appellant, *vs.* William H. Hart, auditor of state of the State of Indiana. Filed November 7, 1902.

FILE COPY.

FILED
FEB 13 1904
JAMES H. McKENNEY,
Clerk.

1445

IN THE

Supreme Court of the United States

JAMES C. FARGO, as President of the American Express Company, *Appellant*,

v.

WILLIAM H. HART, Auditor of State of the State of Indiana, *Appellee.*

No. 154.

REVISED BRIEF FOR APPELLEE.

CHARLES W. MILLER,
Attorney-General of Indiana,
Attorney for Appellee.

CASSIUS C. HADLEY,
L. G. ROTHSCHILD,
WM. O. GEAKE,
Of Counsel.

WM. B. BURFORD, PRINTER, INDIANAPOLIS.

IN THE

Supreme Court of the United States

JAMES C. FARGO, AS PRESIDENT OF THE AMERICAN EXPRESS COMPANY, *Appellant*,

v.

WILLIAM H. HART, AUDITOR OF STATE OF THE STATE OF INDIANA, *Appellee*.

No. 154.

REVISED BRIEF FOR APPELLEE.

STATEMENT.

This is a proceeding brought by James C. Fargo, as president of the American Express Company, to enjoin William H. Hart, auditor of the state of Indiana, from certifying down to the auditors of the respective counties in the State of Indiana the assessment made by the state board of tax commissioners upon the lines and routes of the said American Express Company in said state.

The action was first instituted on the 24th day of August, 1898. Subsequently, in the years 1899, 1900, 1901

and 1902, supplemental bills were filed, under stipulations and agreements of parties, all embodying the same propositions and for the same purposes as the original bill.

A temporary restraining order was issued by the judge of the circuit court for the district of Indiana, pleadings were filed, the issues joined, evidence taken and trial had before the Hon. John H. Baker, judge of the district court of the United States for the district of Indiana, and judgment was rendered by said judge on the 23rd day of July, 1902, dismissing complainant's bill of complaint and each supplemental bill for want of equity. From this judgment appeal was taken to this court.

Numerous errors are assigned as grounds for appeal, but the substance of the principal questions presented by appellant's brief, appears to be as follows:

One. That the state board of tax commissioners did not properly value the mileage of said company, in that it did not consider the ocean mileage in making up its computation.

Two. The state board of tax commissioners did not properly value the mileage of said appellant for the reason that it included in the valuation of its capital stock some sixteen millions of dollars of securities that were held by said company as an investment only, and which had a situs elsewhere than in the state of Indiana.

Three. That the state board of tax commissioners, under the act in question, were authorized to apportion to the tangible property within the state, upon a mileage basis, only so much of the value of the capital stock as it

was in excess of the tangible property owned by said appellant.

To these questions the appellee interposes the following propositions:

ONE.

That the court properly dismissed the bill for want of equity, for the reason that an injunction against merely assessing officers can not be maintained in a court of equity unless the tax is absolutely void or unless fraud is charged and proven.

TWO.

That where some tax is admittedly due, and only an excess is assailed, an injunction will not lie against an assessing officer and will not lie against a collecting officer, except after payment or tender of payment of the amount admittedly due.

THREE.

That what should be considered in making up the assessment of complainant company by the state board of tax commissioners, in determining the value per mile of the lines and routes of said company in the state of Indiana, was a question of fact, which, by law, is submitted to the exclusive jurisdiction of the state board of tax commissioners, and their conclusion and decision is final, and is not subject to review or collateral attack, unless fraud is charged and proven.

FOUR.

There is no showing in the record as to how the state board of tax commissioners arrived at the value per mile of the lines and routes of complainant company in the state of Indiana. There is no showing, except by averment, that the state board of tax commissioners did not take into consideration the ocean mileage of complainant company, or that said tax commissioners did not take into consideration the fact, as contended, that the bonds and securities were held, as alleged, as an investment, and had a situs outside of Indiana.

FIVE.

That the state board of tax commissioners are not bound by an ironclad rule in assessing the value of appellant's property, but it had the right to ascertain from whatever source accessible the true value of the capital stock of appellant.

SIX.

The bonds and stocks referred to were a part of the working capital of the company in the nature of cash, with no fixed situs.

SEVEN.

The record shows that, even if the state board of tax commissioners did not include the ocean mileage, and did include the value of the bonds, stocks and securities referred to, they were warranted in so doing, and their actions in that behalf did not amount to constructive fraud.

THERE IS NO AUTHORITY FOR A COURT OF EQUITY TO ENJOIN AN ASSESSING OFFICER FROM PERFORMING HIS DUTIES, AS PRESCRIBED BY LAW, IN PLACING AN ASSESSMENT MADE BY AN ASSESSING BOARD UPON THE TAX DUPLICATES OF THE DIFFERENT COUNTIES.

We maintain that there is no authority for a court of equity to enjoin any clerical officer from extending assessments for taxation upon the duplicates. There is no authority in the rules of equity whatever for enjoining either the auditor of state or the auditor of a county from performing what the law enjoins upon him. The auditor of state simply certifies down the assessments made by the state board of tax commissioners to the auditors of the counties, and the auditor of the county places such assessment upon the tax duplicates that are to be placed in the hands of the collecting officers.

In our opinion there is not, and never has been, any warrant for any court to enjoin the state board of tax commissioners, or any member of said board, or the auditor of state, from assessing or certifying down to the county auditors the assessment made by the state board of tax commissioners.

Occasionally such proceeding has been had, but in none of the cases where such proceeding has been had, as we understand them, has the question been directly raised and decided by this court.

The wholesale method of blocking the collection of taxes against corporations which follows when an injunction is granted against the auditor of state, has no warrant in

law or precedence, and the result must necessarily be to delay the collection of taxes justly due the state, and the subsidiary corporations.

A few years ago in the state of Indiana a great railroad corporation brought a suit for an injunction against the auditor of state to enjoin him from certifying down the assessments made against such corporation. A temporary restraining order was issued, and millions of dollars of taxable property were thereby kept off the duplicate. Three-fourths of the counties of the state were affected thereby; and many of them were seriously inconvenienced in the performance of their public duties. The taxing officers were delayed in preparing their duplicates, and great inconvenience to the public was experienced thereby—inconvenience and losses which could not be recovered or compensated for, simply because the said company felt that its assessment on some of its lines had been made too high.

So, in the case at bar, this great corporation, the American Express Company, whose capital stock today is worth near fifty millions of dollars; which transacts millions of dollars' worth of business in the state of Indiana every year; which, by the very nature and character of its business, requires and constantly demands the utmost vigilance of the police officers of the state, and the constant protection of the power of its courts; and yet, by this action, it has escaped paying one cent of taxes on this business, except the pittance paid on the bare tangible property, since 1898, a period of nearly four years. This is not

equity. It is not just, and deserves the rebuke of an equitable court.

It was admitted before the tax board—and this admission was before the court below—that the complainant company should be assessed not less than $25 per mile within the state of Indiana, and it was substantially confessed that it should be assessed $138 per mile. (Record, p. 204.)

And yet, because this company is of opinion that it was assessed at too great an amount per mile, it not only refuses to pay the excess, but brings a suit and enjoins the collection of the amount confessedly due. It brings the suit against a state officer, which proceeding, in its nature, exempts the complainant company from the payment of any taxes anywhere in the state of Indiana, except that assessed upon its bare tangible property, for all the years since 1898, although during those years it has constantly demanded of said state protection in the transaction of its business, and invoked, at all times, the aid of the courts in protecting and conserving its rights, notwithstanding it was insisting on its refusal to bear its share of the burdens thus imposed upon the people.

That this is the rule in Indiana is clearly expressed in the case of Smith v. Smith, 159 Ind. 388, where injunction proceedings were brought against the auditor of the county, to enjoin him from placing upon the tax duplicate an assessment made by the state board of tax commissioners and certified down to said county auditor by the auditor of state.

The lower court overruled a demurrer to the complaint, and granted an injunction, and, upon appeal, this judgment of the lower court was reversed upon the ground that the action had been brought prematurely. Speaking to this point, on page 389, the court say:

> "It is the general disposition of the courts to require a careful showing of serious wrong and hardship imminently threatened by the enforcement of the tax, for which there is lacking a plain and adequate remedy at law, to justify the granting of the writ, because it is contrary to public policy unnecessarily to interrupt the ingathering of the public revenues. In Dows v. City of Chicago, supra, it was said by the Supreme Court of the United States, at page 10: 'It is upon taxation that the several states chiefly rely to obtain the means to carry on their respective governments, and it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the operations of the government, and thereby cause serious detriment to the public. No court of equity will, therefore, allow its injunction to issue to restrain their action, except where it may be necessary to protect the rights of the citizen whose property is taxed, and he has no adequate remedy by the ordinary processes of the law.'
>
> "The execution of the legislative mandates respecting the assessment and collection of general taxes is intrusted to administrative officers in the

executive department of the government, and the fact that a court, in the exercise of its chancery powers, is wanting in authority to order such officers to proceed, after it has stopped them by its writ, is a reason why this jurisdiction should be exercised only in cases of substantial necessity. 1 High, Injunctions, §487; State Railroad Tax Cases, supra; Pittsburgh, etc., R. Co. v. Board, etc., supra. The observation applies with especial force to applications for the writ against the making of the assessment, since the practical effect of granting writs under such circumstances would often be to relieve from a tax that ought in justice to be paid. * * *

"The question arises whether a party entitled to enjoin a tax sale should not, even where his title is clouded, be compelled to wait until the duplicate containing the objectionable assessment goes into the hands of the treasurer, and he is threatening or about to levy. It is our opinion that in the absence of a showing of an especial necessity for earlier interference he should be compelled thus to wait, because of considerations of public policy. The spreading of the assessment on the duplicate is not what creates the lien, and the objecting taxpayer knows that, in the orderly course of official procedure, the assessment will soon be open to his attack. If he succeeds, his property is relieved of the cloud without unreasonable delay, while if he fails, the assessment is in the hands of the official who is charged with the duty of collection without undue delay. The sale of real estate would cloud the title thereto, and therefore that may be a sufficient reason for enjoining the sale; but after the

assessment is made there would be no ground to interpose to prevent a cloud being cast on the title by putting the assessment on the duplicate, because the title is already clouded to practically the same extent by the making of the assessment. * * *

"But we are persuaded that, in all cases not involving some extraordinary necessity for the earlier issuing of the writ, it ought not to be granted before the duplicate is in the hands of the treasurer, and he is threatening or about to collect the tax. * * *

"It was observed by Frazer, J., speaking for the court in Jones v. Summer, 27 Ind. 510, that 'The decisions of this court heretofore, in restraining the collection of taxes, have gone to the utmost extent of authority.' This is our present view, and while we believe that the courts may properly interfere in favor of a suitor who has just and equitable grounds for an application to stay the hand of the officer who is seeking to enforce a void assessment, yet we think that the courts ought, in all ordinary cases, to balance, so to speak, the demands of the state, that ought not to be delayed in the collection of its revenues, and the claims of a suitor who makes the proper preliminary showing for a temporary restraining order or temporary injunction, and to grant the latter the preventive power of the court only at that stage of the proceedings when his substantial right may be protected, if it turn out that he has one, with the minimum amount of prejudice to the public, if, upon investigation, it turn out that the writ was improvidently issued."

This is the latest expression of the supreme court of Indiana upon this question, and the reasons it presents for the rule therein laid down are so cogent, that is seems to us they should be applied to the present case.

BEFORE A COURT OF EQUITY WILL ENJOIN THE COLLECTION OF A TAX, IT IS NECESSARY FOR THE COMPLAINANT TO PAY, OR MAKE AN UNCONDITIONAL TENDER OF SUCH PART OF THE TAXES AS IS UNDISPUTED, OR WHAT CAN BE SEEN TO BE DUE FROM THE FACE OF THE BILL, OR SHOWN TO BE DUE BY AFFIDAVITS.

State Railroad Tax Cases, 92 U. S. 575, 616, 617;

National Bank v. Kimball, 103 U. S. 732, 733;

Stanley v. Supervisors of Albany, 121 U. S. 535, 552;

Albuquerque Bank v. Perea, 147 U. S. 87, 90;

Northern Pac. R. Co. v. Clark, 153 U. S. 252, 272;

City Council v. Sayre, 65 Ala. 564, 566;

County of Los Angeles v. Ballerino, 99 Cal. 593, 597;

Bundy v. Summerland, 142 Ind. 92, 93;

Morrison v. Jacoby, 114 Ind. 84, 93;

Studabaker v. Studabaker, 152 Ind. 89, 97;

Lewis v. Boguechitto, 76 Miss. 356, 359;

Palmer v. Township, 16 Mich. 176, 178;

County Commrs. v. Union Mining Co., 61 Md. 545, 556;

Ottawa Glass Co. v. McCaleb, 81 Ill. 556, 562;

Northern Pac. R. Co. v. Patterson, 10 Mont. 90, 103;
Welch v. City of Astoria, 26 Ore. 89, 91;
Union Pac. R. Co. v. Ryan, 2 Wyo. 408;
Huntington v. Palmer, 8 Fed. 449;
People's Nat. Bank v. Marye (Advance Sheets, 24 Sup. Ct. Rep. 68, Jan. 1, 1904);
Copper Co. v. Scherr, 50 W. Va. 533, 540;
Covington v. Town of Rockingham, 93 N. C. 134, 140-141;
High on Injunctions (3d ed.), §497;
2 Beach on Injunctions, §1208;
1 Spelling Inj. and Extra. Rem. (2d ed.), §662;
2 Cooley on Taxation (3d ed.), 1424-1426;
State, ex rel., v. Western Union Tel. Co., 165 Mo. 502, 517.

In State Railroad Tax Cases, 92 U. S. 575, on page 616, Mr. Justice Miller, speaking for the court, says:

> "But there is another principle of equitable jurisprudence which forbids in these cases the interference of a court of chancery in favor of complainants. It is that universal rule which requires that he who seeks equity at the hands of the court must first do equity.
>
> "The defendants in all these cases are the clerks and treasurers of the counties—the clerk who makes out the tax list, and the treasurer who collects the taxes. These taxes are both the state and county taxes. It is clear, from the statements of the bills and from what we have already said, that there must be in every county mentioned a consid-

erable amount of real estate and personal property coming within the character of local tangible property, and subjected to taxation on precisely the same principles, and no other, that all other personal and real estate within the county is taxed. It is equally clear that the road-bed within each county is liable to be taxed at the same rate that other property is taxed. Why have not complainants paid this tax? In reference to the latter, it is said that they resist the rule by which the value of their road-bed in each county is ascertained, and therefore resist the tax. But surely it should pay tax by some rule. If the rule adopted gives too large a valuation in some counties, it must be too small in others. What right have they to resist the tax in the latter case? And in the former, is the whole tax void because the assessment is too large? Should they pay nothing and escape wholly because they have been assessed too high? These questions answer themselves. Before complainants seek the aid of the court to be relieved of the excessive tax, they should pay what is due. Before they ask equitable relief, they should do that justice which is necessary to enable the court to hear them.

"It is a profitable thing for corporations or individuals whose taxes are very large to obtain a preliminary injunction as to all their taxes, contest the case through several years' litigation, and when in the end it is found that but a small part of the tax should be permanently enjoined, submit to pay the balance. This is not equity. It is in direct violation of the first principles of equity jurisdiction."

In National Bank v. Kimball, 103 U. S. 732, it was held that the owner of taxable property who seeks to enjoin the collection of a tax thereon which he alleges to be in excess of what is lawful, must first pay or tender so much thereof as is justly due. Citing and following the decision in State Railroad Tax Cases, 92 U. S. 575.

In Stanley v. Supervisors of Albany, 121 U. S. 535, on page 552, Mr. Justice Field, speaking for the court, says:

> "If the assignors of the plaintiff had any just grounds of complaint to the assessment as excessive, they should have pursued the course provided by statute for its correction or resorted to equity to enjoin the collection of the illegal excess upon payment or tender of the amount due upon what they conceded to be a just valuation."

In Albuquerque v. Perea, 147 U. S. 87, it was held that in order to procure an injunction restraining the collection of a tax, it is necessary to pay or offer to pay such parts of the sums assessed as is not disputed. Following State Railroad Tax Cases, 92 U. S. 575, 616.

In Northern Pacific Railroad Co. v. Clark, 153 U. S. 252, Mr. Justice Jackson, speaking for the court, on page 272, says:

> "We have announced more than once that it is the established rule of this court that no one can be permitted to go into a court of equity to enjoin the collection of a tax until he has shown himself entitled to the aid of the court by paying so much of the taxes assessed against him as it can be plainly

seen he ought to pay. Applying this rule to the present case, it is clear that the applicant's bill was properly dismissed for failing to pay or tender to pay taxes which he ought to have paid on his property or in lieu thereof, a percentage of its gross earnings. Our response therefore to the eighth question certified is, that the bill was without equity because of the failure to aver that the plaintiff had tendered or paid the gross earnings percentage for the year 1889 (or the tax assessed by the county auditors), and was not entitled to the equitable relief prayed without first tendering or paying such taxes."

In City Council v. Sayre, 65 Ala. 564, the court say:

"It is apparent that if all the objections to the tax assessed could be sustained, there remains a considerable amount which is justly due and ought to have been paid. There is no averment in the bill that the complainants made any effort to procure a separation of the taxes confessedly legal from those which are supposed to be illegal; nor was there any tender of payment; nor is there in the bill an offer to pay. We quote and adopt the language of the supreme court of the United States in State Railroad Tax Cases, 92 U. S. 616, 'Before complainants seek the aid of the court to be relieved of the excessive tax, they should pay what is due. Before they seek equity relief they should do that justice which is necessary to enable the court to hear them. It is a profitable thing for corporations or individuals whose taxes are very large to obtain a preliminary injunction as to all of their taxes, contest the case through several years of

litigation and when in the end it is found that but a small part of the taxes should be permanently enjoined, submit to pay the balance. This is not equity. It is indirect violation of the principles of equity jurisdiction.' If bills of this kind could be entertained, municipal corporations would be placed at the mercy of the reluctant and litigious taxpayers, embarrassed in all their operations and incapable of preserving the peace, order and proper government of the localities to which their powers extend."

In County of Los Angeles v. Ballerino, 99 Cal. 593, 597, the court say:

"In appealing to a court of equity for relief by way of injunction against such fraudulent assessment, the plaintiff must show by his complaint that he has paid or tendered the amount of taxes which would have been due from him if his property had been assessed at what he concedes would have been a fair valuation, and he must in addition offer to pay what the court shall find to be equitable and just (cite authorities); and we think the same facts should appear in an answer which seeks to defend against the collection of a tax on the ground of a fraudulent assessment. Tested by this requirement the answer of defendant fails to state facts sufficient to constitute an equitable defense to this action growing out of such alleged fraudulent assessment. It contains no allegation that defendant ever paid or offered to pay what would have been right for him to pay upon what he concedes would have been a fair valuation of

his property, nor does he offer to pay what the court shall ascertain to be just, and for this reason there was no error in excluding the evidence offered by him tending to prove the matters alleged in his answer."

In Bundy v. Summerland, 142 Ind. 92, on page 93, the court say:

"It is settled in this state that if a part of the tax charged on the duplicate against a party be legal and a part illegal, that which is legal must be first paid or tendered to the treasurer before an action to enjoin the collection of the residue can be maintained. * * * The rule requiring the taxpayer to pay or tender all taxes due upon property owned by him, which is subject to taxation before he can enjoin the taxes claimed to be illegal, is a just and salutary one and should be strictly enforced. When a tender is made to a county treasurer and is refused, the same must be kept good by paying into court when the complaint is filed, the amount legally due for taxes. This must be alleged in the complaint or the same will not be sufficient to withstand a demurrer for want of facts."

In Studabaker v. Studabaker, 152 Ind. 89, 97, the court say:

"If any portion of a tax in question is invalid, the part thereof which is valid ought to have been paid or a tender of the money in payment thereof ought to have been made before an action to enjoin the collection of the residue could be main-

> tained, and such tender, if refused, must be kept good by paying the money into court. These facts in such cases must be alleged in the complaint, or it will not be sufficient to repel a demurrer."

In Huntington v. Palmer, 8 Fed. 449, it was held that where a stockholder on behalf of himself and all others who should come and contribute to the expense of the suit, brought a bill in equity against the corporation and the tax collector to enjoin the collection of a state and county tax, as being illegal and unconstitutional and as such utterly void, that as the bill did not allege payment of so much of the taxes as must be conceded ought to be assessed and paid, it was demurrable, and an averment in the bill of a readiness to make such payment is not sufficient.

Mr. High in his work on injunctions says:

> "No principle of the law of injunctions is more firmly established than that requiring a taxpayer who seeks aid of an injunction against the enforcement or collection of a tax, to first pay or tender the amount which is conceded to be legally and properly due. Applying the maxim that he who would have equity must first do equity, the courts have almost uniformly required where a definite portion of the taxes was conceded to be justly due and payable, that the complaining taxpayer should first pay or tender the amount admitted to be due before extending preventive relief by injunction as to the residue. Where therefore complainant has not paid that portion of the tax which is clearly valid, to which no objection is offered and which

may readily be distinguished from the illegal portion, the injunction will be denied, since the collection of a legal tax will never be restrained to prevent the enforcement of an illegal one, and since a court of equity will not lend its extraordinary aid by injunction to one who himself refuses to do equity. And in all such cases the bill itself must show what portion of the tax is legal and what illegal in order that the court may be enabled to properly discriminate between them and to determine what portion of the entire tax should be paid and what enjoined." 1 High on Injunction (3d ed.), sec. 497.

See also Western Union Tel. Co. v. Gottlieb, 190 U. S. 412, 426-427.

IT IS NOT SUFFICIENT TO SAY IN THE BILL THAT THEY ARE READY AND WILLING TO PAY WHATEVER MAY BE FOUND DUE. THEY MUST PAY WHAT IS CONCEDED TO BE DUE OR WHAT CAN BE SEEN WOULD BE DUE ON THE FACE OF THE BILL OR BE SHOWN BY AFFIDAVITS WHETHER CONCEDED OR NOT, BEFORE THE PRELIMINARY INJUNCTION SHOULD BE GRANTED.

In State Railroad Tax Cases, 92 U. S. 575, on page 617, Mr. Justice Miller, speaking for the court, says:

> "It is not sufficient to say in the bill that they are ready and willing to pay whatever may be found due. They must first pay what is conceded to be due or what can be seen to be due on the face of the bill, or be shown by affidavits, whether conceded or not, before the preliminary injunction should be granted. The state is not to be thus tied

> up as to that of which there is no contest, by lumping it with that which is really contested. If the proper officer refuses to receive a part of the tax, it must be tendered, and tendered without the condition annexed of a receipt in full for all the taxes assessed. We are satisfied that an observance of this principle would prevent the larger part of the suits for restraining collection of taxes which now come into the courts. We lay it down with unanimity, as a rule to govern the courts of the United States in their action in such cases.

In Albuquerque v. Perea, 147 U. S. 87, on page 90, Mr. Justice Brewer, speaking for the court, says:

> "With respect to the taxes of 1889, there was no payment or tender of payment of any amount. Plaintiff seeks to avoid the necessity therefor by alleging that it is impossible to separate the legal from the illegal portions of the taxes; an allegation which is manifestly untrue in view of the fact that it had no difficulty in making the separation of the taxes of 1888, the assessment for which was made in a similar way; and in view of the further fact that it must have known what property it had which was subject to taxation as well as its value, and therefore the rate of taxation being fixed by law, it could of course have known what amount was undoubtedly due. The rule in respect to this matter is perfectly well settled in this court." Citing and following State Railroad Tax Cases, 92 U. S. 575, 616.

In Hagaman v. Commissioners, 19 Kansas 394, 395, the court say:

> "By the repeated decisions of this court the plaintiff is not rightly entitled to the relief demanded until he has done that justice, or offered to do it, which he exacts from others. He who seeks equity must do equity. The action of the court in sustaining the demurrer was correct. (Citing authorities.) To the suggestion of counsel for the plaintiff that if the court found any of the taxes illegal the judgment should have been for the plaintiff, conditioned upon his paying the legal taxes, not that he had no case in court, we can not better reply than by using the forceful language of Mr. Justice Miller in Bailey v. A. & P. R. Co., C. L. J., Vol. I, 502, that, 'whenever parties come into this court to ask this court to enjoin the collection of taxes or the collection of part of a tax, if there is any part which they admit to be due or just or which the court can see in the statement made in the bill, ought to be paid, there must be an allegation in the bill conforming to the fact, that they have paid it, or that they have tendered it; and it is not a sufficient allegation to come and say that we are willing or even that we have paid it into the court, because the state is not to be stayed in its revenue which is admitted to be due in that way; and a party claiming that he will not pay his taxes, or any portion of them, can not screen himself during the course of a long litigation from paying that which must be paid and which everybody can see must be paid, by setting up a con-

test over that which is doubtful and which may or may not be necessary to be paid.'"

In County Commissioners v. Union Mining Co., 61 Md. 545, 557, the court say:

"It being according to our view, conceded by the demurrer, that the increase from $250,000 to $273,450 was made without proper notice, the levy and collection of the tax on this difference of $23,450 is illegal and void.

"From all we can gather from the bill, the change from $200,000 to $250,000, first made, although made without notice, was acquiesced in by the appellee and the taxes paid thereon, and therefore is not now before us but only the taxes levied on the property after the last change, but notwithstanding this, the appellee was not entitled to the injunction to the extent that it was granted. The taxes on the $250,000 were due and ought to have been paid or tendered unconditionally and the fact have been so averred in the bill.

"In State Railroad Tax Cases, 92 U. S. 617, the supreme court says: 'It is not sufficient to say in the bill that they (the complainants) are ready and willing to pay whatever may be found due; they must first pay what is conceded to be due or what can be seen to be due on the face of the bill or be shown by affidavits whether conceded or not before the preliminary injunction should be granted. The state is not to be thus tied up as to that of which there is no contest, by lumping it with that which is really contested. If the

proper officer refuses to receive a part of the taxes, it must be tendered, and tendered without the condition annexed of a receipt in full for all the taxes assessed.' In this case there was no actual tender, but only a professed willingness to pay an *uncertain* sum."

In Chicago, etc., R. R. Co. v. Board, 67 Fed. 413, Judge Caldwell, speaking for the court, said:

"In the federal courts, no one can enjoin the collection of a tax until he has paid or made an unconditional tender of so much of the tax assessed against him as can be plainly seen he ought to pay. State Railroad Tax Cases, 92 U. S. 575, 616, 617; Bank v. Kimball, 103 U. S. 732. The tender made by the appellant in this case was not sufficient, and when advised of the insufficiency of the tender by record evidence of the valuation by the county assessors of all other property in the county for taxation, it merely amended its bill offering to do equity. This was not a compliance with the rule. It should have paid or tendered unconditionally an amount of tax equal to that assessed on other property in the county. An averment of readiness to pay or a tender made in the bill is not sufficient in this class of cases. The tender must be made to the officer authorized to collect the taxes. It must be actual and unconditional and made in money or in evidence of indebtedness of the county which by law of the state is made a legal tender in the payment of the taxes."

See—

State Railroad Tax Cases, 92 U. S. 575, 617;
Albuquerque Bank v. Perea, 147 U.S. 87, 90;
Morrison v. Jacoby, 114 Ind. 84, 99;
Hagaman v. Commissioners, 19 Kan. 394, 395;
County Commissioners v. Union Mining Co., 61 Md. 545, 557;
Chicago, etc., R. Co. v. Board, 67 Fed. 413.

In the case of People's National Bank of Lynchburg v. Marye, decided November 30, 1903, and found in No. 3, vol. 24, Supreme Court Reporter, 68, this question was thoroughly considered and reviewed by this court. In that case an injunction suit had been brought to restrain the collection of taxes on shares of stock in a national bank, on the ground that such taxes were illegally laid, and, after a full consideration of the case, this court held, in substance, that the payment—or, at least a tender—of the amount of the taxes shown from the bill on complainant's own theory, justly and equitably to be due, must be made before a court of equity will interfere by injunction with their collection.

Mr. Justice Peckham, speaking to this point, for the court, on page 70 of the opinion as found in such Reporter, says:

> "From this it appears there has, in fact, never been any payment or tender of any part of the taxes assessed against the shareholders during the years above mentioned, and the omission of an

averment of payment, or tender of payment, was, therefore, not a mere oversight.

"In our view of the facts set forth in this case in the original and supplemental bills, the complainant was not entitled to any injunction unless it paid the amount equitably due; and if it made such payment, then the injunction would issue, restraining the collection of the balance. This is, of course, upon the assumption that the objections taken to the acts as above set forth are well founded. * * *

"The original and supplemental bills, taken together, show at least the amount that would be justly and equitably due on the theory of the complainant, for they show that if the two deductions (being all that are insisted upon by the complainant) had been made by the taxing officer, the complainant would not have had any ground of complaint as to the amount of the taxes. There are data in the original and supplemental bills from which it can be at once and definitely determined what the amount of the deductions claimed by complainant would be. The market value of the stock is stated for each year, as assessed by the taxing officer, and also the value of the real estate is stated for each year, and this last amount, complainant insists, should be deducted in arriving at the market value of the stock. The bills also show the different shareholders who had debts at the time the various assessments were made, and the amounts of the deductions they would, therefore, be entitled to for each of the years in controversy. These two classes of deductions being made, the complainant offers no equitable objection to taxes

which might be assessed upon the balance. With these data thus appearing, from which the equitable amount of the taxes due by the shareholders is readily determined, we think this conceded amount should be paid before a court of equity ought to grant its aid by way of injunction. The universal rule of a court of equity is that he who seeks its equitable interposition must himself do equity. Is there any higher equity than that a citizen should pay the amount of a tax which he concedes to be just and equitable, before asking the aid of a court of equity to grant an injunction to enjoin the collection of any greater sum?

"The complainant, however, insists that the rule does not exist where the assessments are void, and not merely irregular; and it asserts that these assessments are void because the acts under which they were laid do not provide for notice to the shareholder before determining the value of the share upon which the tax is to be laid, and also because the assessment violated the act of congress in being at a greater rate than is assessed upon other moneyed capital.

"We are of opinion, however, that these assessments were not void within the meaning of the rule which absolves the taxpayer from the necessity of paying or tendering the amount equitably due from him. If there were no right to assess the particular thing at all, either because it is exempt from taxation, or because there is no law providing for the same, an assessment under such circumstances would be void, and, of course, no payment or tender of any amount would be necessary before seeking an injunction, because there could be no

amount equitably due where there never had been a right to assess at all. Where, however, there is a statute which provides for an assessment, and gives jurisdiction to the taxing officer, under some circumstances, to make one, but the particular assessment is invalid for want of a notice to the taxpayer, or some other kindred objection, the equitable duty still rests upon him to pay what would be his fair proportion of the tax as compared with that laid upon other property, before he can ask the aid of the chancellor to enjoin the collection of the balance. This is the equitable rule, and it is good morals as well. To say that the act under which the tax is levied is unconstitutional, and therefore is the same as no law, and hence there is no duty to pay anything, because no tax can be levied without some law therefor, is to state the proposition too broadly. We concede that if the law were unconstitutional because, for instance, there was no constitutional power to tax the particular property, there is no necessity to pay anything. But where some part of the law may be unconstitutional because of a failure to comply with some matter of detail, but the amount which the owner of the property ought to pay is perfectly clear under the provisions of law, then if the taxpayer desire to be exempted from paying more than his share, he must pay or offer to pay his proportion, before equity will aid him in his effort to escape paying a disproportionate share.

"The statute herein provides for a tax and creates the equitable obligation to pay some amount by reason of the shares, and even though there may be some obstacle which prevents its entire legality,

yet the person assessed should recognize his equitable obligation to pay the tax to the extent stated, before he can base any claim for the assistance of equity to get rid of the balance of the tax. The mere lack of a provision in the statute for notice did not take away the jurisdiction of the taxing officer to make an assessment under any circumstances.

"What is the purpose of notice? Clearly, that the person assessed may have an opportunity to show some reason, if any, why he should not be assessed at all, or else not so much as he has been in fact. But suppose that, although there was no notice provided for in the act, the taxpayer had nevertheless heard of the assessment, and in fact had appeared before the assessing officer and made his case, showing he should not be assessed more than a certain stated amount, and the officer had allowed his claim to its full extent. Should he be thereafter permitted to resist by means of an injunction the collection of the tax so imposed, upon the ground that the statute provided for no notice to him, and none was officially given? Certainly not. So, when he comes into a court of equity to ask its aid, should it appear, on his own statement or otherwise, that if all the claims he makes were allowed he would still equitably owe the government a certain sum by reason of the statute providing for the assessment and his ownership of the property assessed, will he be heard to insist that the court grant him an injunction preventing the collection of any tax, because he had no notice of the assessment? He owes something to the government as a tax upon his shares, and

> ought any court of equity to aid him in escaping all obligation because, while insisting that the whole assessment is illegal, it yet clearly appears that a portion thereof, even if uncollectible, is nevertheless equitably and justly due. Is the equitable obligation arising by reason of these statutes and under these circumstances, to pay *some* tax, completely obliterated because the particular tax can not legally be collected, and may be called void? We think clearly not. This same reason applies not only to a lack of notice, but also to the case of a claim that the tax is illegal because it did not allow the deductions which by the Federal statute should have been allowed. The tax under such circumstances is not void, but, at most, voidable for the illegal amount. Albany County v. Stanley, 105 U. S. 305, 315, 26 L. ed. 1044, 1051."

The learned Justice then takes up and considers a number of cases bearing upon this question, all sustaining the principles above enunciated, and, after considering the same, makes the application in the following language:

> "In the case at bar because certain deductions were not made, although there was a large sum assessable even if the deductions were allowed, the injunction granted has prevented the collection of any part of the assessments, and for twelve years the stockholders in these Lynchburg banks have paid not one dollar of taxes by reason of their ownership of such shares. This is inequitable and unjust, and a court of equity should not be made the instrument by which such injustice is continued."

A case like the one at bar is not like a case between individuals, where a suit is in the nature of a truce, and each may remain in statu quo while the question at issue is being settled.

Here, it stays the hand of a sovereign from enforcing the performance of a duty entailed upon one of its citizens, while the citizen continues to demand, and continues to receive, the protection and safe conduct, and the use of all the machinery of the law he would have received had he fully performed his whole duty.

It is a one-sided truce, and should not be countenanced, except in extreme cases, where the sovereign, in flagrant abuse of power and utter disregard of the rights of its citizens, is endeavoring to commit a palpable wrong.

THE STATE BOARD OF TAX COMMISSIONERS, HAVING FIXED THE VALUATION AND ASSESSED THE PROPERTY, THEIR ACTION IN THIS BEHALF IS FINAL, AND CAN NOT BE AVOIDED OR SET ASIDE, EXCEPT FOR FRAUD ON THE PART OF THE STATE BOARD OF TAX COMMISSIONERS, WHICH WOULD RENDER THE ASSESSMENT VOID.

The law providing for the assessment of lines and routes of express companies contemplates a complete system of taxation of this class of property, and, for the information of the court, we quote the sections of the act of the legislature of 1893, herein referred to, which apply directly to the assessment of express companies:

> Sec. 3. Every joint stock association, company, copartnership or corporation incorporated or acting under the laws of this or any other state, or

any foreign nation engaged in conveying to, from, through, in or across this state, or any part thereof, money, packages, gold, silver, plate, merchandise, freight or other articles, under any contract, express or implied, with any railroad company, or the managers, lessees, agents or receivers thereof, provided such joint stock association, company, copartnership or corporation is not a railroad company, shall be deemed and held to be an express company within the meaning of this act, and every such express company shall annually, between the first day of April and the first day of June, make out and deliver to the auditor of state a statement, verified by the oath of the officer or agent of such association, company, copartnership or corporation making such statement with reference to the first day of April next preceding, showing:

First. The total capital stock or capital of said association, company, copartnership or corporation.

Second. The number of shares of capital stock issued and outstanding and the par or face value of each share, and, in case no shares of capital stock are issued, in what manner the capital thereof is divided and in what manner such holdings are evidenced.

Third. Its principal place of business.

Fourth. The market value of the said shares of stock on the first day of April next preceding, and if such shares have no market value, then the actual value thereof; and in case no shares of stock have been issued, state the market value, or the actual value in case there is no market value, of the capital thereof, and the manner in which the same is divided.

Fifth. The real estate, structures, machinery, fixtures and appliances owned by said association, company, copartnership or corporation, and subject to local taxation within the state of Indiana, and the location and assessed value thereof in each county or township where the same is assessed for local taxation.

Sixth. The specific real estate, together with the improvements thereon, owned by said association, company, copartnership or corporation, situate outside the state of Indiana and not used directly in the conduct of the business, with a specific description of each piece, where located, the purpose for which the same is used, and the sum at which the same is assessed for taxation in the locality where situated.

Seventh. All mortgages upon the whole or any part of its property, together with the dates and amounts thereof.

Eighth. (a) The total length of the lines or routes over which such association, company, copartnership or corporation transports such merchandise, freight or express matter.

(b) The total length of such lines or routes as are outside the state of Indiana.

(c) The length of such lines or routes within each of the counties and townships within the state of Indiana.

Sec. 5. Upon the filing of such statements the auditor of state shall examine them, and each of them, and if he shall deem the same insufficient, or in case he shall deem that other information is requisite, he shall require such officer to make such other and further statements as said auditor of

state may call for. In case of the failure or refusal of any association, company, copartnership or corporation to make out and deliver to the auditor of state any statement or statements required by this act, such association, company, copartnership or corporation shall forfeit and pay to the state of Indiana one hundred ($100) dollars for each additional day such report is delayed beyond the first day of June, to be sued and recovered in any proper form of action in the name of the state of Indiana on the relation of the auditor of state, and such penalty, when collected, shall be paid into the general fund of the state.

Sec. 6. Upon the meeting of the state board of tax commissioners for the purpose of assessing railroad and other property, said auditor of state shall lay such statements, with such information as may have been furnished him, before said board of tax commissioners, who shall thereupon value and assess the property of each association, company, copartnership or corporation in the manner hereinafter set forth, after examining such statements and after ascertaining the value of such properties therefrom, and from such other information as they may have or obtain. For that purpose they may require the agents or officers of said association, company, copartnership or corporation to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses, in case they shall deem it necessary, to enable them to ascertain the true cash value of such property.

Sec. 7. Said state board of tax commissioners

shall first ascertain the true cash value of the entire property owned by said association, company, copartnership or corporation from said statements or otherwise, for that purpose taking the aggregate value of all the shares of capital stock, in case said shares have a market value, and in case they have none, taking the actual value thereof or of the capital of said association, company, copartnership or corporation, in whatever manner the same is divided, in case no shares of capital stock have been issued: Provided, however, that in case the whole, or any portion of the property of such association, company, copartnership or corporation shall be incumbered by a mortgage or mortgages, such board shall ascertain the true cash value of such property by adding to the market value of the aggregate shares of stock or to the value of the capital, in case there shall be no such shares, the aggregate amounts of such mortgage or mortgages, and the result shall be deemed and treated as the true cash value of the property of such association, company, copartnership or corporation. Such board of tax commissioners shall, for the purpose of ascertaining the true vash value of the property within the state of Indiana, next ascertain from such statements or otherwise, the assessed value for taxation, in the localities where the same is situated, of the several pieces of real estate situate without the state of Indiana and not specifically used in the general business of such associations, companies, copartnerships or corporations, which said assessed values for taxation shall be by said board deducted from the gross value of the property as above ascertained. Said state board of tax commissioners

shall next ascertain and assess the true cash value of the property of such associations, companies, copartnerships or corporations within the state of Indiana, by taking the proportion of the whole aggregate value of said associations, companies, copartnerships or corporations, as above ascertained, after deducting the assessed value of such real estate without the state, which the length of the lines of said associations, companies, copartnerships or corporations, in the case of telegraph and telephone companies within the state of Indiana, bears to the total length of the lines thereof; and in the case of palace, drawing-room, sleeping, dining or chair-car companies, the proportion shall be the proportion of such aggregate value, after such deductions, which the length of the lines within the state, over which said cars are run, bears to the length of the whole lines over which said cars are run; and in the case of express companies, the proportion shall be the proportion of the whole aggregate value, after such deductions, which the length of the lines or routes, within the state of Indiana, bears to the whole length of the lines or routes of such associations, companies, copartnerships or corporations, and such amount, so ascertained, shall be deemed and held as the entire value of the property of said associations, companies, copartnerships or corporations within the state of Indiana. From the entire value of the property within the state so ascertained, there shall be deducted, by said board, the assessed value for taxation of all the real estate, structures, machinery and appliances within the state and subject to local taxation in the counties and townships, as herein-

before described in item No. 5 of sections 1, 2, 3 and 4 of this act, and the residue of such value so ascertained, after deducting therefrom the assessed value of such local properties, shall be by said board assessed to said association.

Sec. 8. Said state board of tax commissioners shall thereupon ascertain the value per mile of the property within the state by dividing the total value, as above ascertained, after deducting the specific properties locally assessed within the state by the number of miles within the state, and the result shall be deemed and held as the value per mile of the property of such association, company, copartnership or corporation within the state of Indiana.

Sec. 9. Said state board of tax commissioners shall thereupon for the purpose of determining what amount shall be assessed by it to said association, company, copartnership or corporation in each county in the state, through, across, into or over which the line of said association, company, copartnership or corporation extends, multiply the value per mile as above ascertained by the number of miles in each of such counties as reported in said statements, or as otherwise ascertained, and the result thereof shall be by said board certified to the auditor of state, who shall thereupon certify the same to the auditors respectively of the several counties through, into, over or across which the lines or routes of said association, company, copartnership or corporation extend, and such auditors shall apportion the amount certified for their counties respectively among the several townships into, through over or across which such lines or

routes extend in proportion to the length of the lines in such townships.

Under the foregoing statutes, the validity of which has been frequently upheld and is not here questioned, after the filing of the statements, as therein provided, upon the convening of the board, said board "shall, thereupon, value and assess the property of said association * * * after examining said statements, and after ascertaining the value of such properties therefrom, *and from such other information as they may have or obtain.*"

Here the board is given full power to "value and assess." Ample opportunity is given the company or association to present its side of the case, but the board is not bound by such statements or information. If not satisfied, it may seek elsewhere and obtain all the information it desires, and, upon this information it must render judgment and value and assess and ascertain the true cash value of its property.

This proposition is directly upheld in the case of State v. Adams Express Company, 144 Ind. 549, on page 556, where the court say:

> "The state board of tax commissioners is not confined for its information as to the value of property to be assessed to the statements mentioned. Section 6 (R. S. 1894, section 8483) authorizes them to resort to 'such other information as they may have or obtain' for that purpose.
>
> "So that we see that it is not true that the assessment of so much per mile on the whole number of miles of the route of each company in this state

was made on a myth; that the appellees claim that such assessment was not made in respect to any property belonging to them in the state of Indiana is wholly unfounded in fact or law. On the contrary, it was made upon that portion of the whole property belong to each of the companies that was used in the prosecution of their business in the state of Indiana; and its value was fixed and ascertained by apportioning such a part of the value of the whole property as the proportion thereof in this state bore to the whole property."

That the board shall seek evidence and render judgment is emphasized in section seven, where it is provided:

> "Said state board of tax commissioners shall first ascertain the true cash value of the entire property owned by said association * * * from said statements *or otherwise*.

Then the state board shall ascertain from such statements *or otherwise* the assessed value for taxation of the several pieces of real estate situate without the state and not specifically used in the general business of such association; which said assessed value for taxation shall be by said board deducted from the gross value of the property *as above ascertained*. After this deduction the value in the state shall be ascertained by taking the proportion of the whole aggregate value of such associations, after such deductions, which the length of lines or routes within the state of Indiana bears to the whole length of the lines or routes of such associations. And from the entire value

of the property within the state, so ascertained, there shall be deducted the assessed value for taxation of all the real estate, structures, machinery and appliances within the state, subject to local taxation in the counties and townships.

This plan of taxation is fair and just. If such a plan were followed in all the taxing jurisdictions in which appellant has lines and routes, appellant would not be subject to excessive or double taxation.

UNDER THESE PROVISIONS OF THE STATUTE THE STATE BOARD OF TAX COMMISSIONERS ARE GIVEN JURISDICTION OVER THE SUBJECT MATTER, TO VALUE AND ASSESS THE MILEAGE OF THE EXPRESS COMPANIES HAVING LINES AND ROUTES WITHIN SAID STATE. ACTING UNDER THIS AUTHORITY, THEY DID MAKE SUCH ASSESSMENT AND RENDER THEIR FINDING, WHICH, IN ITS NATURE, IS THAT OF A JUDGMENT, AND IS FINAL. ESPECIALLY IS THIS TRUE AS AGAINST A COLLATERAL ATTACK.

In the case of Cleveland, Cincinnati, Chicago & St. Louis Railway Company v. Backus, 133 Ind. 513, the question of the constitutionality of the act now before the court was presented; also the question of the finality of the decision of the state board of tax commissioners when assessing property over which it had jurisdiction, and, on page 541, the court say:

> "The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside, except for fraud on the part of the state board of tax commissioners, which would render the assessment void. Fraud vitiates even the most solemn judicial

proceedings, and would likewise vitiate the proceedings of any tribunal created for the purpose of determining the rights of parties; but we do not think it can be seriously contended that the proceedings in this case seek to attack or avoid the valuation or assessment made by the state board, of appellant's property, on the ground that the state board was guilty of fraud, or acted corruptly in the discharge of its duties in the appraisement and assessment of the property of railway companies; and, if it were so contended, the averments of the complaint fall far short of being sufficient to present such a question.

"What we have said disposes of the major portions of the questions presented in the case. The court having no power to review the proceedings, the action of the state board being final, no right of action existed to set it aside, except for fraud, and it not being attacked on that ground, no evidence was admissible, for it is a well settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this state. Cooley on Taxation, p. 748, and authorities there cited; Bass v. City of Ft. Wayne, 121 Ind. 389; Sims v. Hines, 121 Ind. 534; McCollum v. Uhl, 128 Ind. 304; Central, etc., Gravel Road Co. v. Black, 32 Ind. 468.

"The court could not inquire into the evidence upon which the board made its assessment and determine as to whether such board arrived at just valuations or not. The board has passed upon that question, and with its adjudication the matter ends.

> The decision of the state board being final, the record of that board required to be kept by the law, section 121 of the act of 1891, is conclusive."

And in the case of P., C., C. & St. L. Ry. Company v. Backus et al., 133 Ind. 625, where the same act and the same question were before the court, the same doctrine is reiterated. On page 652, speaking to this point, the court say:

> "The state board having fixed the valuation and assessed the property, their action in this behalf is final, and can not be avoided or set aside except for fraud on the part of the state board of tax commissioners, which would render the decision void. * * *
>
> "The court having no power to review the proceedings, the action of the state board being final, no right of action existed to set it aside except for fraud, and, it not being attacked on that ground, no evidence was admissible; for it is a well settled rule that the courts have no power to give any relief against erroneous assessments of such boards, except they are given such power by statute, and no such power is given in this state."

In the case of Youngstown Bridge Co. v. Kentucky & I. Bridge Co. et al., 64 Fed. 441, the facts were that taxes had been assessed upon a bridge across the Ohio river, a portion of which bridge was within the county of Floyd and state of Indiana, and a portion thereof in the state of Kentucky. The state board of tax commissioners assessed to the owner of said bridge an amount,

as was alleged, greatly in excess of the value of the bridge within the state of Indiana.

There was no question but what the state board of tax commissioners had jurisdiction over a portion of said bridge, and had authority to tax a portion thereof to the owners. The opinion is an exhaustive one, rendered by a judge of wide experience and studious investigation of the Indiana laws, one who had spent his life in the practice and on the bench in Indiana, and we desire to quote from it at length, feeling that this opinion should have much weight with this court. Judge Baker, on page 441, says:

> "It is the settled law of this state that the state board of tax commissioners is not a judicial tribunal, within the meaning of the constitution, and that it has only such quasi judicial powers as are possessed by every public officer vested with discretionary power; but when, in the exercise of its quasi judicial power, it has fixed the value of property falling within its jurisdiction, and has assessed such property, its action in that behalf is final, and can not be avoided or set aside, except for fraud on the part of the board. Railway Co. v. Backus, 133 Ind. 513, 33 N. E. 421. Upon its face, the assessment in question appears to be within the jurisdiction of the board. It professes to be an assessment made upon the property of the bridge company in Floyd county, in the state of Indiana. It is conceded that a portion of the property assessed is located in the state of Indiana, but it is insisted that the board did not confine its assessment to the property in this state, but in-

cluded therewith property of the bridge company located in Kentucky. The precise question for decision, then, comes down to this: The board, professing to assess property in this state, by mistake, erroneously assessed some proportion of the bridge property actually located in Kentucky as though located within the state of Indiana. Jurisdiction is the power to hear and decide. The board is vested with the power to hear and decide, not only on the value of taxable property, but it must necessarily have the power to hear and decide what property is properly assessable. Its decision is no more void when it decides erroneously than when it decides correctly. It is of the essence of the power to hear and decide that the determination may be erroneous as well as correct. To hold that jurisdiction is lost because of an erroneous decision would be to overturn principles as ancient and venerable as the law itself. Before the board can lawfully fix an assessment, it must determine that the property about to be assessed is the proper subject of assessment, and also the value which ought to be placed upon it for purposes of taxation. The determination of the one is not more within its rightful jurisdiction than the determination of the other. Every fact necessary to support the decision of the board is as conclusively settled against collateral attack as though expressly found by it. 'Absolute nullities in judicial proceedings,' says the supreme court of Louisiana in Stackhouse v. Zuntz, 36 La. Ann. 529, 533, 'are such as result from radical defects, omissions, and irregularities appearing on the face of the record, and are not dependent on matters en pais to be established ali-

unde.' So the doctrine that a judgment appearing to be valid on its face can not be contradicted by evidence aliunde, or by matters dehors the record, has been expressly decided in Indiana, in Earle v. Earle, 91 Ind. 27, 42; Phillips v. Lewis, 109 Ind. 62, 68, 9 N. E. 395; Kingman v. Paulson, 126 Ind. 507, 26 N. E. 393; in Colorado, in Hughes v. Cummings, 7 Colo. 203, 2 Pac. 928; in Missouri, in Scott v. Crews, 72 Mo. 261, 263; in Tennessee, in Byram v. McDowell, 83 Tenn. 581, 585; Stanley v. Sharp, 48 Tenn. 417; in Vermont, in Beech v. Rich, 13 Vt. 595; in Wyoming, in ex parte Bergman, 26 Pac. 914, 919. And the supreme courts of Illinois and Vermont have ruled that it can not be controverted by plea. Wellborn v. People, 76 Ill. 516; Beech v. Rich, supra. As taxing officers act judicially, and have general and exclusive jurisdiction over assessments for purposes of taxation, an error in assessing exempt property does not render the assessment void. So it was held in Louisiana concerning an assessment on a schoolhouse owned by a church which was exempt by law. First Presbyterian Church v. City of New Orleans, 30 La. Ann. 259. It was held in Minnesota that a tax judicially assessed is not void because the land was exempt (County of Chicago v. St. Paul & D. R. Co., 27 Minn. 109, 6 N. W. 454); and the same ruling was made in England in respect to an assessment of a poor rate to the occupier of land, exempt because it belonged to a literary society (Birmingham v. Shaw, 10 Adol. & E. (N. S.) 868, 880, 59 E. C. L. 867, 879). The record of the state board of tax commissioners can not be contradicted, varied, or ex-

plained by evidence aliunde, touching any matter whose decision is committed to it, any more than can the record of a court of general jurisdiction. Railway Co. v. Backus, supra. And it is clear, beyond dispute, that among the things expressly committed to it is the determination of what property is properly subject to assessment by it. This is the first question which it must determine in the exercise of its jurisdiction. Some tribunal must be intrusted with this power, and the legislature has confided it to a board composed of the most eminent personages in the state. The power is an important and delicate one, which can not be administered with unerring certainty in every case, but its determinations are as likely to be unmixed with error and partiality as any other tribunal to which these questions could be committed. In the absence of fraud, the citizen who is aggrieved by its erroneous judgments must submit, without remedy."

This case was appealed to the circuit court of appeals of the seventh circuit, and an opinion given thereon, which is found under the title of McLeod et al. v. Receveur, 71 Fed. 455. The facts are closely reviewed, and the opinion of Judge Baker upheld. Judge Jenkins, speaking for the court, on page 458, says:

"It is, no doubt, true, as urged by the counsel for the appellants, that a judgment pronounced by a tribunal having no authority to determine a matter in issue is necessarily and incurably void, and that such want of jurisdiction may be shown in any collateral or other proceeding in which it is

drawn in question. That principle, however, has no proper relation to the case in hand, because it is undenied and undeniable that the board of equalization had the power to assess, and the state of Indiana and the county of Floyd had lawful right to tax the property of the bridge company lying within the county of Floyd. The officers of the board of equalization, in estimating the value of property for taxation, act judicially. Their judgments in cases within their jurisdiction, in the absence of fraud, are not open to collateral attack. They can only be impeached in a direct proceeding. * * * It is, in effect, charged that they committed an error of judgment, being misled to believe that the boundary line of the state was below low-water mark in the Ohio river, and so placed upon the property lying within the state a greater valuation than they otherwise would have done; in other words, that, through a mistake of fact and error of judgment, the property of the bridge company lying within the state was excessively valued. The board of equalization had, however, jurisdiction of the subject-matter, and, as observed by Chief Justice Ryan, 'had jurisdiction to commit the error;' and its determination, however erroneous, can not be impugned collaterally. Jurisdiction existing, any order or judgment is conclusive in respect of its own validity in a dispute concerning any right or title to be derived through, or anything done by virtue of, its authority. * * *

"The law of Indiana does not seem to afford a remedy to the property owner by review of the action of the board of equalization to avoid an assessment unjust because above the real value of the

> property. The board met at stated times, regulated by law, and all parties in interest had the right to appear before the board, and to be heard; and as a matter of fact, the bridge company appeared before the board, and was heard. This is sufficient to meet the constitutional requirement that one shall not be deprived of his property without due process of law. Paulsen v. Portland, 149 U. S. 30, 13 Sup. Ct. 750. It is not essential that a right of appeal to the courts should be provided."

In Stanley v. Supervisors of Albany, 11 U. S. 535, where the question of taxing shares of a national bank was presented, the shares had been assessed by the assessors, and such assessment had not been appealed to the board of review, as required by the statute, but proceedings were brought to recover taxes that were so paid on such assessment alleged to be wrongful. Mr. Justice Field, speaking for the court, on page 550, says:

> "In nearly all the states, probally in all of them, provision is made by law for the correction of errors and irregularities of assessors in the assessment of property for the purposes of taxation. This is generally through boards of revision or equalization, as they are often termed, with sometimes a right of appeal from their decision to the courts of law. They are established to carry into effect the general rule of equality and uniformity of taxation required by constitutional or statutory provisions. Absolute equality and uniformity are seldom, if ever, attainable. The diversity of human judgments, and the uncertainty attending all hu-

man evidence, preclude the possibility of this attainment. Intelligent men differ as to the value of even the most common objects before them—of animals, houses, and lands in constant use. The most that can be expected from wise legislation is an approximation to this desirable end; and the requirement of equality and uniformity found in the constitutions of some states is complied with when designed and manifest departures from the rule are avoided.

"To these boards of revision, by whatever name they may be called, the citizen must apply for relief against excessive and irregular taxation, where the assessing officers had jurisdiction to assess the property. Their action is judicial in its character. They pass judgment on the value of the property upon personal examination and evidence respecting it. Their action being judicial, their judgments in cases within their jurisdiction are not open to collateral attack. If not corrected by some of the modes pointed out by statute, they are conclusive, whatever errors may have been committed in the assessment. As said in one of the cases cited, the money collected on such assessment can not be recovered back in an action at law, any more than money collected on an erroneous judgment of a court of competent jurisdiction before it is reversed.

"When the overvaluation of property has arisen from the adoption of a rule of appraisement which conflicts with a constitutional or statutory direction, and operates unequally not merely on a single individual but on a large class of individuals or corporations, a party aggrieved may resort to a

> court of equity to restrain the exaction of the excess, upon payment or tender of what is admitted to be due."

In the case of Adams Express Co. v. Ohio, 165 U. S. 194, where a question similar to the question now before the court was presented, Mr. Chief Justice Fuller, speaking for the court on the question of excessive valuation, on page 229, says:

> "We have said nothing in relation to the contention that these valuations were excessive. The method of appraisement prescribed by the law was pursued and there were no specific charges of fraud. The general rule is well settled that 'whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it can not be overthrown by evidence going only to show that the fact was otherwise than as so found and determined."

In the case of Maish v. Arizona, 164 U. S. 599, suit was brought in the district court of the territory of Arizona, for the recovery of delinquent taxes, on the ground that the delinquent list was incorrectly published, and the further ground that the taxes were illegally assessed; that the board of equalization had raised the value of the property arbitrarily, and without notice or evidence; that such assessment was grossly unfair. Mr. Justice Brewer, speaking for the court upon this point, on page 610, says:

> "There is nothing tending to show that the board, in fixing the value of cattle at $7.42, acted fraudulently or with any wrongful intent, or that that valuation was not the result of its deliberate judgment upon sufficient consideration and abundant evidence, and it would be strange, indeed, if an assessment could be set aside because a single witness is found whose testimony is that the valuation was excessive. No assessment could be sustained if it depended upon the fact that all parties thought the valuation placed by the assessing board was correct. Something more than an error of judgment must be shown, something indicating fraud or misconduct. * * * It is unnecessary to determine whether this board erred in its judgment as to the value of this property, whether it would not have been better to have made further examination and taken testimony as to the cost of construction, present condition, etc. Matters of that kind are left largely to the discretion and judgment of the assessing and equalizing board, and if it has acted in good faith its judgment can not be overthrown."

In the case of Van Nort's Appeal, 121 Pa. St. 118, on page 129, the court say:

> "The fraud which may be urged against the assessment must, in general terms, have either consisted in a wilful disregard, by the members of the board, of a known duty, for the purpose of producing a result which could not otherwise have been produced, or in their denying or preventing the taxpayer from doing something that he might

> lawfully do, and, but for being denied and prevented by them, would have done, which would or might have had the effect to have caused a lower valuation of the property to be made."

Counsel, in support of their contention that this judgment of the tax board may be thus assailed, cite the case of Hart v. Smith, 159 Ind. 182. But in that case it was averred that the tangible property was given in and assessed at $47,657.41, which was its true cash value, and that the increase of $352,340 added by the state board of tax commissioners, was upon the good will, an element or species of property, under the laws of that state, over which the state board had no jurisdiction; this bill was demurred to, which, in effect, admitted all the allegations in relation thereto to be true. Neither of the parties to the suit presented the technical question, preferring to have the case determined on the merits; but an *amicus curae* filed a brief by leave of court, raising the question.

This is clearly shown by the following language of the court, found on page 195 of the opinion:

> "The questions involved in this case that have been argued by the respective parties have been questions that went to the merits of the state board of tax commissioners to tax the appellees, and, as the parties stand in the attitude of waiving all other questions, we have been disposed to consider, so far as we could properly do so, the substantial questions in the case, but it is insisted by an *amicus curiae*, who, by leave of court, has filed a brief, that the effort of such board to tax the good-will

> of appellees' business ought also to be upheld, because this proceeding is a collateral attack on the action of the board."

Under this condition of the record the court held that since it was averred and admitted to be true that the tax board had made such assessment upon the good will of the newspaper, and as, under the law of the state, such board had no jurisdiction over this species of property, and hence its assessment as to such good will was void and could be collaterally attacked.

The opinion referred to was given under the foregoing circumstances, and such opinion should be considered as only affecting the case in hand. Said opinion is supplemented by an opinion of the same court, found in the same report, on page 388, in the case of Smith, Auditor, v. Smith, et al., *supra*, this latter being a suit involving the same questions, and between the same parties, except that instead of the proceeding being brought against the auditor of state, it was brought against the auditor of the county, and in referring to the case of Hart. v. Smith, supra, the court, on page 389, say:

> "This action is so far a counterpart of the case of Hart v. Smith, ante, 182, that we may refer to the decision in that case for a further statement of the facts alleged in the complaint in this case. The Hart case was presented *on the merits of the controversy*, but in this case the Attorney-General makes the point that the action was prematurely brought."

Then the court goes on to consider the technical question presented by the state, and holds that an injunction would not lie against an assessing officer, as has been heretofore quoted in this brief.

Under the foregoing authorities complainant can not, in a collateral proceeding, be heard to say that the board of tax commissioners did not properly value its property, or in such valuation did not properly consider all the elements and conditions that influenced or determined the value of the mileage of the lines and routes in Indiana. The state board of tax commissioners was the tribunal to which the determination of all these questions was submitted, and their finding and decree can not thus be collaterally attacked, except on grounds of fraud.

So, we say that the decision of the judge of the lower court should be sustained without any consideration of the evidence introduced.

I.

Because the powers of a court of equity can not be invoked to restrain an auditor of state from certifying down to county auditors the assessments made by the state board of tax commissioners.

II.

Because some tax is admittedly due, and an injunction in such case should not issue until complainant has paid, or properly tendered the amount so admitted to be due.

III.

Because the only claim here is that of excessive valuation, and since the state board of tax commissioners is the tribunal constituted by law to determine all questions as to valuation of the lines and routes within the state, their determination on all such questions, in the absence of fraud, is final and conclusive as against a collateral attack.

But if this court goes further, and considers the evidence in this case, it will find that there is absolutely no evidence in the record that the board of tax commissioners in the state of Indiana did not conscientiously follow the directions of the statute in making the assessments complained of. It is presumed they did their duty, and the burden is on appellant to show, by a fair preponderance of the evidence, that they did otherwise. This, appellant did not do or attempt to do, and until it has so proven, it should not be permitted to maintain this action.

The statements of the officers and representatives, with their protests, to the board, were offered, but there is no showing anywhere that this was all of the evidence heard or received by the board. There is nothing in the record to show how the state board arrived at its judgment. The board had jurisdiction over the subject matter; they had the right to hear all the evidence procurable, as to the value of the capital stock of appellant and as to its mileage —whether they did this, the record is silent.

The statements of appellant through its officers to the board were introduced on the trial, but there is no show-

ing anywhere, by any one, that these statements were all the evidence presented to the board. Nor is there any showing how the board arrived at the decision that appellant company should be assessed at $450.00 per mile on its lines and routes in Indiana. This could only be shown by putting the members of the board upon the witness stand, and having them explain their mental processes. This, of course, we maintain would not have been permissible. It would be an unheard of proceeding to put a judge upon the witness stand to explain how he arrived at a given conclusion, or what he included in a given judgment. Yet this was what was necessary for appellant to have done to maintain this action.

The absurdity of such a proposition clearly illustrates the force of our contention that this court can not, in a collateral proceeding, inquire into the correctness of the judgment of the state board of tax commissioners, unless fraud is charged and proven. But how can this court say the board acted fraudulently, when this court is not informed how it performed its duties?

IF THE COURT SHOULD GO FURTHER AND FIND THAT THE STATE BOARD OF TAX COMMISSIONERS HAD NOT INCLUDED THE OCEAN MILEAGE OF APPELLANT, AND DID INCLUDE THE VALUE OF THE STOCKS AND BONDS ALLEGED TO BE HELD AS AN INVESTMENT, THE BOARD WERE WARRANTED IN SO DOING.

The record shows that the complainant company had returned for its mileage—

For the year 1896	$34,220 00
For the year 1897	34,957 00
For the year 1898	163,063 00

(Rec., p. 233.)

In other words, the mileage increase of 1897 over 1896 was 737 miles; of 1898 over 1897 was 129,106, or an increase of mileage of over four times that of the year before; and, in addition to this, it claimed a reduction of its assets in use in the express business of over $15,000,000.00; or, in other words, while the company had increased its mileage over 129,000 miles, it claimed a reduction of its capital of over $15,000,000.00. This was rather a startling condition to present, to say the least, and the board was warranted in regarding it with a strong degree of suspicion, and the burden was upon the complaining company to fully enlighten the board, and give the board all the information in its possession that would show that this increase of mileage and decrease of assets was bona fide.

The record discloses that appellant was exceedingly reticent and sparing of any information upon these subjects,

although the board clearly expressed to appellant's representatives that it was not satisfied with the explanations made in the statements filed, as is shown on pages 230 and 231 of the record, and, in accordance with the suggestions of the board, appellant sent another representative to afford the information desired by said board. This was Mr. L. W. Fargo. His evidence is found on pages 236, 237, 238, 239, 240 and 241 of the record, and at the very first question, this representative of the company, sent to inform and advise the board of these great changes in their statement, entered a practical disclaimer of any knowledge of the facts the board desired to know, and for the next two or three pages, to every question propounded to him touching the matters in which the board was so vitally interested, he frankly admitted that it was out of his division, and not within the range of his knowledge, and he was unable to give any information upon the subjects inquired about. The record shows that there was a studied effort to withhold information from the board, rather than to enlighten it; but the company evinced an absolute indifference to the wishes of the said board—if not a studied effort to keep from said board all information it could possibly conceal.

The apportionment of the enormous increase in mileage is found on page 187 of the record. By this table it is shown that all this mileage is ocean mileage, which is reckoned from the ports of New York and Boston to foreign ports. It is not claimed that any of it is interior mileage; that is, from station to station. (See testimony

of Flagg, page 66 of transcript.) For example, it is claimed that there are two lines from New York to Liverpool, and for this they claim 6,106 miles; that there is one line from New York to Southampton, and for this they claim 3,100 miles; that there is one line from Boston to Liverpool, and for this they claim 2,874 miles; that there are two lines from New York to London, and for this they claim 6,600 miles; that there are two lines from Boston to London, and for this they claim 6,200 miles; that there is one line from New York to Aukland, New Zealand, and for this they claim 11,578 miles, and yet, by the statement made by Francis F. Flagg in evidence in this case, it is shown that they have three offices in Great Britain and Ireland and six on the European continent.

There is no claim that the express matter sent on the ships is attended by any messenger or any person in the employ of the American Express Company, but, on the contrary, as shown by the evidence of Francis F. Flagg, on pages 165, 166-167, and of the transcript of the evidence, ordinary freight is put in packed cases, and valuables are placed in charge of the purser of the ship. It clearly appears that this process was engaged in as early as 1896. See affidavit of James C. Fargo, page 193 of the record. And yet it never occurred to these astute financiers to make any claim for this mileage until after the determination of the former suits in 1897.

The character of the contracts with the various transportation companies is not shown—whether there was a guarantee of a minimum amount or only a fixed rate on the freight handled without regard to the amount.

These facts, together with other facts brought out at the hearing before the state board, and weighed under the rules that the facts as to this mileage were peculiarly within the knowledge of the complainant company, and that the burden was upon them to establish to the satisfaction of the state board that this enormous increase was a valid increase, and considered with the fact that the record discloses that the state board were honest and diligent and earnest in their efforts to get at the true facts in relation thereto, and the indifference and apparent refusal of the complainant company to further enlighten the said board, and to bring before said board any one who could testify of his own knowledge as to how this ocean mileage was apportioned, or how it was managed and controlled and conducted, we do not believe this court is warranted in saying that the state board of tax commissioners were prompted by fraudulent motives in making such assessment. If they had no fraudulent intention, and their acts were not fraudulent, then we contend that this court can not review their proceedings, as is clearly said in the case of Pittsburg, etc., Railroad Company v. Backus, 154 U. S. 421, by Justice Brewer, speaking for the court, on page 434:

> "Upon this testimony the decision of the court was that there was nothing to impeach the assessment made by the state board, and in this conclusion we concur. The true cash value of the plaintiff's property in the state of Indiana in the year 1891 was a question of fact, the determination of which for the purposes of taxation was

given to this special tribunal, the state board. Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact, and if such determination comes into inquiry before the courts it can not be overthrown by evidence going only to show that the fact was otherwise than as so found and determined. Here the question determined by the state board was the value of certain property. That determination can not be overthrown by the testimony of two or three witnesses that the valuation was other than that fixed by the board. It is true such testimony may be competent, and was received in this case because, taken in conjunction with other testimony, it might establish fraudulent conduct on the part of the board sufficient to vitiate its determination. It is not, however, contended by counsel that there was any actual fraud on the part of that board; that the individual members thereof deliberately violated the obligations of their oaths of office, and intentionally placed upon the property of the plaintiff a valuation which they knew to be grossly in excess of that which it in fact bore, and did so with the purpose of making the plaintiff bear a larger share of the burden of the support of the state government than it rightfully should. The contention is rather that the board made a grievous mistake in placing so high a value, and that it took into consideration property outside of the state, and gave to the property within a value partly deduced from that without the state. The testimony, however, does not sustain this contention."

The mileage system of taxation has but one purpose, and that is to permit a great business or system which is extended over several taxing jurisdictions to be so assessed for taxation that each taxing jurisdiction gets fair proportion of the taxation borne by the entire system. It is on this theory that the principle has been sustained by the courts. Should the courts so construe the law as to require values to be apportioned between such parts of the system as are within taxing jurisdictions and such portions as are wholly without taxing jurisdictions, this construction instead of making the system a means of fairly apportioning taxes would make it one for the evasion of taxation because the valuation assigned to the parts of the system which were outside of taxing jurisdiction, as for instance ocean mileage, would wholly escape taxation and such a construction would make the system a violation of the constitutional provisions requiring equality and uniformity of taxation.

THE EVIDENCE WHOLLY FAILS TO SUSTAIN THE CONTENTION OF APPELLANT RESPECTING THE OWNERSHIP, SITUS AND USE OF THE STOCKS AND BONDS OWNED BY APPELLANT.

Upon this proposition the same rules would apply as to the powers of this court in reviewing the proceedings of the state board of tax commissioners, as were shown to exist in the argument of the last preceding proposition. The state board of tax commissioners had this question before it, and the question of the ownership of these bonds and stocks before it; it considered the matter, and it must

be presumed that it took all of the bonds and suggestions as to the use of these bonds and stocks into consideration when it fixed the value of the mileage of the complainant company; but we contend that even if this court were to sit in judgment upon its proceedings, it would be compelled to confirm the same.

The contention of the complainant on this proposition is based upon the dicta in the Adams Express Company case, found in 166 U. S. 185, in which Justice Brewer, speaking for the court, on page 222, says:

> "It is suggested that the company may have bonds, stocks or other investments, which produce a part of the value of its capital stock, and which have a special situs in other states, or are exempt from taxation. If it has, let it show the fact. Courts deal with things as they are, and do not determine rights upon mere possibilities."

Continuing, on page 223, he says:

> "Presumably all that a corporation has is used in the transaction of its business, and if it has accumulated assets which, for any reason, affect the question of taxation, it should disclose them."

The burden, therefore, is upon the complainant to show to the satisfaction of the state board of tax commissioners that it has stocks and bonds that are not used in its business, are not a necessary incident or assistance to it in its business, which stocks and bonds have a fixed situs outside the state, if it desires to have the same omitted from taxation. It surely has not done this in this case.

In the first place, an express company is like a bank. It must have a sufficient capital to give it credit, in order to obtain business. The complainant company is a great company, and, in the course of its business, within a year, it handles hundreds of millions of dollars, entrusted to its care and keeping. If the business world did not have confidence in its ability to pay its losses, does any one believe for a moment that it would receive this enormous business? If it should become known throughout the business world that the American Express Company had lost, say, twenty millions of its capital, by some misadventure, would it not impair its business? If the railroads knew that it did not have a dollar of capital outside of its tangible personal property, would they be willing to make contracts for long terms involving thousands of dollars, without any bond or security, as they now do? Would the company be able to give their $750,000 annual bonds to the government? Mr. Flagg, in his testimony, on page 168 of the record, says these investments are not used to obtain these bonds. But, on page 178 he shows that these bonds are given with personal security; these sureties are indemnified by the signature of the company alone. Would these personal sureties be available for such large sums on such indemnity if appellant did not have these great assets. Without their eleven or twelve million dollars of railroad stocks would they be enabled to control the express business of the roads of which those railroad stocks form a part?

With the exception of a few hundred thousand dollars

of these bonds and stocks which this complainant company holds, and which it now says forms no part of its business, every dollar of it is issued by a carrier company or corporation over which or with which the complainant company does business.

Further than this, this company was organized for the purpose of conducting an express business. The powers and duties of the board of directors are set out in their articles of association. These powers and duties are found beginning on page 142 of the transcript, in article 16 of the articles of association. Among other things it is provided:

> "It being, however, expressly understood and provided that no director shall use, or employ the money, credit or name of this company otherwise than in its legitimate business."

The "legitimate business" is set out in article 10, found on page 140 of the record.

The power given the directors to make the investments referred to, is found in Article XVI, of the Articles of Association, on page 144 of the record, where it is provided:

> "They are also authorized to invest the assets of this company in real estate, or in equipment or outfit, or in such stocks, bonds, mortgages, notes or other securities, *as may be deemed desirable for purposes of investment, or be deemed conducive to the furtherance of the business of the company;* and may from time to time sell and dispose of any

of such investments, and re-invest the proceeds thereof, and may anticipate the sale of any of such investments, by the hypothecation thereof to secure the purchase money of any other of such above-named securities as the said board may choose to purchase upon the credit of this company, and such purchases and sales may include the stock of this company: the intention hereof being to give to said board full authority for investment, in its discretion, of all the moneys of this company, with power to purchase any securities upon credit if deemed advisable, *and to hypothecate at any time any or all of its securities in maintenance of such credit.*

Said board may also subscribe in the name of this company for stock or bonds of any railroad in process of construction, or of any other uncompleted enterprise, when believed to be in furtherance of the business interests of this company."

It will be observed from the foregoing provisions that said board of directors are authorized to purchase stocks, bonds, mortgages and other securities for investment, when deemed conducive to the furtherance of the business of the company, and that said securities may be hypothecated to maintain the credit of such company.

Again, how much working capital is necessary for the complainant company? Upon this question there is no evidence that can have any credence. It is true that Francis F. Flagg, third vice-president of the complainant company, on page 176 of the record, says that the appellant could transact its business as it does now with no

other property than the tangible property described, such as safes, horses, wagons and other physical property used in the transportation of its express matter, but this statement is so palpably false that we think we are safe in making the assertion that no unprejudiced person would believe it for a moment.

In fact, Mr. Fargo, on page 248 of the record, says that they have two millions of dollars with which to transact their freight and money business in Europe, most of the time; he also says, on page 258 of the record, that in case judgments are recovered against the company, the money does not necessarily come from New York, as they have money on hands to a greater or less extent, at all offices, out of which they may pay judgments recovered, locally.

It is in testimony that appellant does a great money order business throughout the world, and these money orders are desirable because they can be cashed in almost any bank or hotel of the world; but officers of appellant company have testified that no capital was necessary to carry on this business; that when an order was issued, cash to the amount of the order was received; but, to make the order valuable, there must be either cash or credit at the place of presentation; either, in our opinion, would require very large cash assets.

The articles of association entered into in 1868 absolutely require that the assets should not be reduced below $5,300,000, 25 per cent. of which should be in cash or its equivalent, showing that the persons who had been conducting the American and Merchants' Express realized

that they should have a working capital outside of their tangible property, to that amount, to conduct the business as it was at that time, and we think it is fair to say that $5,300,000 in assets, 25 per cent. of which was cash or its equivalent, was no greater in proportion to the amount of business done by the company at that time, than forty or fifty million is to the business done at the present time.

It is also shown by evidence that these stocks and securities are frequently put up as collateral to procure loans to meet an emergency in the business of the company, and it is owing to the fact that this company has these stocks and bonds, to be used in case of emergency, to pay great losses, that gives it its reputation and high credit which Mr. Flagg speaks about on page 176 of the record.

The credit of a public corporation like an express company is high so long as it promptly meets its obligations, no matter how great they are; but once let its bills go to protest, or its undisputed obligations be delayed until the money can be accumulated to pay them, and Mr. Flagg would soon discover what its reputation and long existence was worth.

We believe that a fair inference—and the only fair inference obtainable from the evidence in this case—is that all of these stocks and bonds are a part of the working capital of the appellant.

The court must bear in mind that the burden was on the complainant company to clearly show, at least by fair preponderance of the evidence, that this capital was not a

part of the working capital of the business. It certainly has not done this.

Counsel contend that the bonds and stocks of appellant company are tangible property, and have a situs in New York, and are not used in its business, and, hence, their value can not be apportioned to the property in Indiana.

We contend that these stocks and bonds are, of necessity, a part of the working capital of appellant; that their possession is a bulwark of solvency and good faith to appellant. It is the great reserve, being of a class of property as ready in a case of emergency as gold itself. It, or its proceeds, can be hurried to any part of the world on a moment's notice. Where is its situs for purposes of taxation?

The record shows that these stocks and securities have been put up as collateral to raise money for uses of the company in cases of emergency. (See Record, page 162.) Where, it is not clear; but it is clear that these stocks and bonds are of the character of transitory assets, just as much so as cash, as the wrecking machinery of a railroad, or reserve sleeping cars that have no fixed lines or routes.

The force, effect and power of this sixteen million dollars of reserve enters into and increases the efficiency and productiveness of the horses and wagons, desks and other appliances of appellant in Indiana. Without this great reserve, insuring prompt settlement of all obligations, and absolute security from losses by robbery, defalcations, panics, or financial upheavals and consequent public confidence, the eight or ten thousand dollars worth of horses,

wagons and such like property in the state of Indiana would not produce the thousands of dollars income annually which it now produces.

It is a part of the working capital of a great financial and transporting company. It may now be in New York city, but tomorrow it may be sent to London, to Paris, to Indianapolis, Chicago or San Francisco, if needed there in any great emergency, to protect the interest of the company.

Where is the situs of the two or three millions of cash belonging to appellant, which is kept in Europe to carry on its business. Is it taxable in Europe, or does it enter in and form a part of the whole system? These stocks and bonds could readily be transported to London and kept there. Under appellant's contention they would thus escape taxation. Would this be permissible either legally or equitably?

It is in evidence that towns the size of Lawrence, Massachusetts, carry on deposit continuously, what it calls its bank, amounting to $800.00. It is a fair inference that similar banks are maintained throughout the United States and Canada, in all towns where it maintains offices, the amounts varying in proportion to the size of the towns, or amount of business transacted. This would amount to an enormous sum. Where is its situs? Is it in the towns where deposited, or is it not rather a part of the whole system, wherever located, devoted to the unity of use of carrying on a great express business? It certainly has not been considered as having a situs in the state of Indiana, *for not a dollar of it is given in for local taxation.*

Our contention is that this sixteen million dollars' worth of stocks and bonds is a part of the working capital, in the nature of cash, that enters into and forms a part of the unity of use in carrying on a great express transportation system, and that their value should be apportioned to the whole system for taxation purposes, since by these valuable assets the bare appliances and accessories of the business are made effective and productive, and the whole system efficient and prosperous, as it is today.

A great railroad corporation has thousands of dollars invested in wrecking machinery. It is kept at some central or terminal station. It is sent over its lines whenever and wherever needed. It may be in Indiana today and in Ohio tomorrow, to Illinois, Missouri or Michigan; yet, we presume no one would contend that the value of this machinery should not be considered in the valuation of the capital stock, and apportioned along the lines of such railroad, other than the one in which such machinery is stationed.

The Pullman Palace Car Company may have—no doubt has—a number of cars at its home yards in Illinois, held in reserve for emergencies. They have no fixed lines or routes. They may be sent to one state; maybe to another; yet, they are not deducted from the value of the capital stock when valued for taxation, and their value is apportiond to the lines of the Pullman Company in the states of Indiana, Ohio and Pennsylvania, although they may never have been in either of said states, and may never be.

So with the value of these stocks and bonds, the unifica-

tion of which, with the bare appliances and accessories in ownership and use, increases the effectiveness of each, and makes a complete and effective whole, in all justice and fairness should be apportioned to the lines and routes in the different states.

In the case of the Pullman Car Company v. Pennsylvania, 141 U. S. 18, the question of the assessment of this company on the mileage basis was before this court. It was contended that the cars of such company were transitory and had no situs in the State of Pennsylvania, but that the situs of such cars was in the State of Illinois, where the company's headquarters and yards were located; but this court held that the situs of such property was not necessarily where the owner resided, and on page 22, Mr. Justice Gray, speaking for the court, says:

> "No general principles of law are better settled, or more fundamental, than that the legislative power of every state extends to all property within its borders, and that only so far as the comity of that state allows can such property be affected by the law of any other state. The old rule, expressed in the maxim *mobila sequuntur personam*, by which personal property was regarded as subject to the law of the owner's domicil, grew up in the middle ages, when movable property consisted chiefly of gold and jewels, which could be easily carried by the owner from place to place, or secreted in spots known only to himself. In modern times, since the great increase in amount and variety of personal property, not immediately connected with the person of the owner, that rule has

yielded more and more to the lex situs, the law of the place where the property is kept and used. Green v. Van Buskirk, 5 Wall. 307, and 7 Wall. 139; Hervey v. Rhode Island Locomotive Works, 93 U. S. 664; Harkness v. Russell, 118 U. S. 663, 679; Walworth v. Harris, 129 U. S. 355; Story on Conflict of Laws, §550; Wharton on Conflict of Laws, §§297-311. As observed by Mr. Justice Story, in his commentaries just cited, 'although movables are for many purposes to be deemed to have no situs, except that of the domicil of the owner, yet this being but a legal fiction, it yields, whenever it is necessary for the purpose of justice that the actual situs of the thing should be examined. A nation within whose territory any personal property is actually situate has an entire dominion over it while therein, in point of sovereignty and jurisdiction, as it has over immovable property situate there.'

"For the purposes of taxation, as has been repeatedly affirmed by this court, personal property may be separated from its owner; and he may be taxed, on its account, at the place where it is, although not the place of his domicil, and even if he is not a citizen or a resident of the state which imposes the tax. Lane County v. Oregon, 7 Wall. 71, 77; Railroad Co. v. Pennsylvania, 15 Wall. 300, 323, 324, 328; Railroad Co. v. Peniston, 18 Wall. 5, 29; Tappan v. Merchants' Bank, 19 Wall. 490, 499; State Railroad Tax Cases, 92 U. S. 575, 607, 608; Brown v. Houston, 114 U. S. 622; Coe v. Errol, 116 U. S. 517, 524; Marye v. Baltimore & Ohio Railroad, 127 U. S. 117, 123.

"It is equally well settled that there is nothing in

> the constitution or laws of the United States which prevents a state from taxing personal property, employed in interstate or foreign commerce, like other personal property within its jurisdiction. Delaware Railroad Tax, 18 Wall. 206, 232; Telegraph Co. v. Texas, 105 U. S. 460, 464; Gloucester Ferry Co. v. Pennsylvania, 114 U. S. 196, 206, 211; Western Union Telegraph Co. v. Attorney-General of Massachusetts, 125 U. S. 530, 549; Marye v. Baltimore & Ohio Railroad, 127 U. S. 117, 124; Leloup v. Mobile, 127 U. S. 640, 649."

In the case of Marye v. Baltimore & Ohio Railroad, 127 U. S. 117, the facts were that the Baltimore & Ohio Railroad was a Maryland corporation, and by the terms of its charter it was exempt from taxation. It had leases and transportation contracts over certain roads in the state of Virginia. It carried on its business in said state by means of its own rolling stock. This rolling stock was not permanently consigned to and used on the Virginia lines, but was changed and interchanged with other rolling stock of the operating company. Taxes were levied upon this stock by the Virginia authorities, and some of it seized and offered for sale in payment of the tax. The sale was enjoined. The question was presented to this court, of the right of the Virginia authorities to levy such a tax on property not having a permanent situs therein. Mr. Justice Matthews, speaking for the court on this point, says, on page 123:

> "It is not denied, as it can not be, that the state of Virginia has rightful power to levy and collect a

tax upon such property used and found within its territorial limits, as this property was used and found, if and whenever it may choose, by apt legislation, to exert its authority over the subject. It is quite true, as the situs of the Baltimore & Ohio Railroad Company is in the state of Maryland, that also, upon general principles, is the situs of all its personal property; but for purposes of taxation, as well as for other purposes, that situs may be fixed in whatever locality the property may be brought and used by its owner by the law of the place where it is found. If the Baltimore & Ohio Railroad Company is permitted by the State of Virginia to bring into its territory and there habitually use and employ a portion of its movable personal property, and the railroad company chooses so to do, it would certainly be competent and legitimate for the state to impose upon such property, thus used and employed, its fair share of the burdens of taxation imposed upon other similar property used in the like way by its own citizens. And such a tax might be properly assessed and collected in cases like the present where the specific and individual items of property so used and employed were not continuously the same, but were constantly changing, according to the exigencies of the business. In such cases the tax might be fixed by an appraisement and valuation of the average amount of the property thus habitually used, and collected by distraint upon any portion that might at any time be found."

But we do not admit that either the market or actual value of the capital stock of appellant company, in 1898,

was only twenty-one millions, and, while that was the market value, as fixed in the statement made by the appellant company to the state board of tax commissioners we do not believe that the taxing act above quoted is so inflexible as to valuation that the state board of tax commissioners are bound to take as the market value of shares of stock the amount fixed in the statement of the express companies, or that the board is bound to conclude that such stock has a market value simply because such statement quotes a market value. If, as a matter of fact, the board, in the investigation it had the right to make, and which it was its duty to make, should ascertain that this company had stocks and bonds, and real estate, and horses and wagons, safes and other appliances, and cash on hand amounting to many millions more than the amount given as the market value of the capital stock, and in addition thereto had established and in successful operation lines and routes covering 34,000 miles in extent—lines and routes it had taken years and millions of dollars to establish; that in addition it had valuable franchises and contracts with transportation companies; that it was paying 6 and 8 per cent. annual dividends upon eighteen million dollars of stock, and each year improving and extending its business, as well as putting aside a large surplus, it would have the right to ignore the statement of the market value and place a proper market value, if it had one, and if it had not, then the actual cash value, as was warranted by the facts.

This position is supported by the decision of the su-

preme court of Indiana in the case of Western Union Tel. Co. v. Taggart, 141 Ind. 281. On page 300 the court say:

> "Were it true, as counsel for appellant contends, that the act of 1893 provides an ironclad mode of assessment by which the board is required to import and assess valuations of property outside the state, there would be no need of any further information than that given by the schedules filed in the first instance.
>
> "The fact that other information is provided for, and agents of the companies and other witnesses may be called, shows that the intention was, as expressly provided in the general tax law of 1891, that the board should assess only property within the jurisdiction of the state, and that only at its true cash value."

This decision is approved in W. U. Tel. Co. v. Taggart, 163 U. S. 1.

In this case there has been no allegation of fraud; there has been no effort to impugn the motives of the state board of tax commissioners. The only intimation of fraud has been in the nature of constructive fraud; that is, that the assessment is of such a character as imputes fraud.

Will the solemn act of a special tribunal, composed of men of the character and standing of the state board of tax commissioners of Indiana, be enjoined upon a bare assumption or imputation?

The figures do not bear out any such contention. The court must presume that the state board of tax commissioners did everything the law required them to do, and,

unless the appellant has clearly shown that the state board of tax commissioners did not do this, then the decision of the lower court should be sustained.

While we do not admit that the board were bound to accept the statements made by appellant company, as to the market value of their capital stock, yet, if this were true, and if the evidence showed that such statements were correct, we insist that the board's action in this behalf did not show fraud, and, for the sake of the argument at least, we present the following upon the figures submitted by appellant company to the state board of tax commissioners:

The statement of appellant to the state board shows that for the year 1898, the value of the capital stock was $21,600,000.00; out of this the law requires the state board of tax commissioners to deduct, first, the assessed (not the market) value of the real estate outside of the state of Indiana, which, in 1898, amounted to $997,220, and, second, the tangible property in the state of Indiana subject to local taxation which, in 1898, amounted to $16,015. This makes the total amount to be deducted in 1898, $1,013,235, leaving a total of property to be considered in taxation in this state of $20,586,765.

The total amount of mileage returned for 1897 (which is the best basis obtainable as to mileage in 1898), was 34,957 miles. $20,586,765 divided by 34,957 gives $589, the amount per mile, which the complainant company could have been assessed, under the statute, but it was only assessed $450 per mile, or upon a total capital of

$15,730,650, or $4,856,115 less than the total amount of assessable capital.

Why did the board make these deductions? What did they consider in making up this amount of nearly five millions of dollars Was it more mileage, or was it deduction from the capital? These are questions this court can not answer, and if the court can not answer, it can not say that it is wrong.

In the succeeding years the assessment per mile is proportionately much less. For example, in 1899, the value of the shares of capital stock was $25,200,000. It was assessed per mile at $450, or, suppose the board considered appellant company had 35,000 miles of lines and routes, this would amount to $15,750,000. The amount of the assessed value of real estate outside of the state, and the tangible property within the state, subject to local taxation, was $985,334. This deducted from $25,200,000 leaves $24,214,666, or, on a basis of 35,000 miles of lines and routes, $691 per mile; but, being assessed at $450 per mile, it shows an assessment upon a capital of $15,750,000, or $8,464,662 less the actual assessable capital stock.

In 1900 the shares of capital stock were apparently worth $26,640,000. The assessed value of the real estate outside of the state, and the value of the tangible property within the state subject to local taxation was $1,144,924, leaving an assessable capital of $25,520,076, or, upon the basis of 35,000 miles, about $730 per mile; it being assessed at $450 per mile left an excess of the capital stock not assessed of $9,770,076.

In 1901 the apparent value of the shares of capital stock was about $40,500,000. It was assessed at $450 per mile. On a basis of 35,000 miles it would be $15,750,000, leaving an excess of assessable capital of about $23,000,000, or two or three millions of dollars more than the value of the stocks and securities.

Does this show fraud? These are matters proper for this court to consider.

These same sections of the act of 1893 came under review in the case of Western Union Telegraph Company v. Taggart, 163 U. S. 1, wherein, on page 29, Justice Gray, speaking for the court, says:

> "The bill then alleges that the commissioners took, as a basis for their assessment, the value of the plaintiff's entire capital stock, estimating the value of the shares according to the price of such shares in the stock exchange market in New York city, and dividing such aggregate value by the total number of miles of the plaintiff's telegraph lines, wherever situated, and thereby obtaining a pretended valuation of $357 per mile of its telegraph line in Indiana, which was 'grossly excessive and far beyond the true cash value of complainant's said property in Indiana.' But the bill immediately proceeds to allege that 'said state board of tax commissioners, in reaching said valuation of complainant's said property in Indiana, did not consider and assess the value of the property of complainant situated in Indiana, otherwise than by pursuing the requirements of said pretended statute.' And the facts stated elsewhere in the bill

demonstrate that the commissioners did not obtain their valuation by merely applying the rule stated in this paragraph. Had they done so, the result would have been that the whole number of shares of stock, being 948,200, at $94.50 a share, would have been $89,594,900, which, divided by 189,576, the whole number of miles of all the plaintiff's lines, would give a value per mile of upwards of $472, or nearly one-third more than the valuation adopted. * * *

"It certainly has no tendency to show that the tax commissioners did not, as they were required to do by the statute, as since construed by the supreme court of the state, assess the plaintiff's property in Indiana at its true cash value, according to their best knowledge and judgment, and after making all proper deductions, on account of larger proportional values of its property and business outside the state, or for any other reason. * * * The allegation that 'the attempted and pretended valuation of complainant's said property by said state board of tax commissioners, in manner aforesaid,' 'necessarily includes, and does in fact include values, which are no part of the true cash value of the property of complainant in Indiana," is but equivalent to an assertion that the decision of the tax commissioners upon the question of fact committed by the statute to their determination was erroneous. As said by this court in Pittsburg, etc., Railway v. Backus, above cited, 'Whenever a question of fact is thus submitted to the determination of a special tribunal, its decision creates something more than a mere presumption of fact; and if such determination comes into in-

quiry before the courts, it can not be overthrown by evidence going only to show that the fact was otherwise than as so found and determined.' 154 U. S. 434, 435."

In Pittsburg, etc., Railway Company v. Backus, 154 U. S. 421, on page 435, Mr. Justice Brewer, speaking for the court, says:

"The certificate of the state board does not show that it reached its determination of the value of the property in Indiana by first ascertaining the total value of the company's property, and then dividing it on the mileage basis. It simply shows that it considered the matters which by the statute were required to be presented to it by the railroad company, as well as all other matters which in its judgment bore upon the question of value, and from such consideration reached the result announced, to wit, the value of that part of the company's road in the state of Indiana. *Evidence that there were peculiar matters which gave to portions of the road outside of Indiana an enormous value as compared with the general line of the road does not prove that the board did not take those peculiar matters into consideration.* On the contrary, the reasonable presumption is that if its attention was called by the company to those facts it *did take them into consideration in connection with the information derived from the total amount of stock and indebtedness of the company.* Indeed, its certificate is affirmatively that it took into consideration 'all other matters appertaining thereto that would assist the board in arriving at a true

cash value' of the parts of the road within the state of Indiana. *That the aggregate value of the entire property of the company was evidence properly receivable and bearing upon the question of value of that part in Indiana is a proposition which, as we have heretofore said, is clearly established both on reason and authority.* * * * The case narrows itself down to this: Is testimony that the value placed by the board was excessive, together with testimony that portions of the road outside of the state were of largely greater value than any similar length of road within the state, unaccompanied with evidence that the board reached the valuation by simply dividing the total value of the company's property on a mileage basis, or that it failed to take into consideration the fact of such excessive value of portions outside the state, sufficient to impeach its determination This question must be answered in the negative. No determination of a special board, charged under the law with the duty of placing a value upon property, can be successfully impeached by such meagre testimony."

NO COURT WILL ENJOIN THE COLLECTION OF TAXES UNLESS FRAUD IS CHARGED AND PROVEN AGAINST THE TAXING OFFICERS. OTHERWISE THE COURT WOULD SUBSTITUTE ITS JUDGMENT FOR THE JUDGMENT OF THE TAXING OFFICERS, WHICH WILL NEVER BE DONE UNLESS FRAUD IS FOUND AS A FACT.

Adams Express Co. v. Ohio, 165 U. S. 194, 229;

Adams Express Co. v. Ohio, 166 U. S. 185;

American Express Co. v. Indiana, 165 U. S. 255;
Adams Express Co. v. Kentucky, 166 U. S. 171;
Sanford v. Poe, 69 Fed. 546;
State v. Adams Express Co., 144 Ind. 549;
P., C., C. & St. L. Ry. Co. v. Backus, 133 Ind. 451, 452;
Western Union Telegraph Co. v. Taggart, 141 Ind. 281.

We, therefore, conclude on this proposition:

One. That appellant does not show that the stocks and bonds in question are not a part of its working capital; but on the contrary, the evidence does show by a fair inference that it is a part of the working capital, with no fixed situs, and is properly apportioned to the lines and routes in the several states;

Two. That there is no showing of fraud on the part of the tax board, or that the board did not conscientiously follow the provisions of the statute, and, hence, this court can not review their decision;

Three. That the evidence does show that the board fairly considered the valuation of the complainant's property and made proper and fair deductions for idle capital and additional mileage.

THE FEDERAL COURT WILL NOT RESTRAIN OR INTERFERE WITH THE COLLECTION OF TAXES ASSESSED BY THE STATE TAXING OFFICERS, EVEN TEMPORARILY, UNLESS THE TAXES ARE WHOLLY VOID.

Cooley on Taxation, 775;
Desty on Taxation, 657;
Palmer v. Township, 16 Mich. 176;
Ottawa Glass Co. v. McCaleb, 81 Ill. 556;
Pittsburg, etc., Ry. Co. v. Board of Public Works, 172 U. S. 32, 37;
P., C., C. & St. L. C. R. v. Backus, 154 U. S. 435;
P., C., C. & St. L. C. R. v. Backus, 133 Ind. 625;
High on Injunctions, sec. 485.

We submit that there are no allegations worthy of a suggestion of fraud in the bill of complaint in this cause.

We do not say that any of the bonds and stock located in New York were taxed by the state board of tax commissioners of Indiana; nor do we say that the value of them were considered as a part of the value of the express company; nor do we say what mileage was considered or how it was apportioned.

We do not know and can not inquire what the tax board took into consideration in making up its estimates. We do know that if every mile of the lines and routes of appellant that is within a taxing jurisdiction was assessed at the same rate as the mileage in Indiana, the total assessment at such rate would be many millions of dollars less than the admitted value of the appellant's assessable property.

Appellant was notified and appeared before the tribunal authorized by law to assess its property. If it failed to so inform such board as to its mileage, or as to its assets, so that either too small a mileage or too large assets were considered in making such estimates, that is the fault and misfortune of appellant, and is no ground for equity interference by collateral attack.

The evidence in this case clearly shows that appellant does not come into this court with the "clean hands" required by the rules of equity jurisprudence. It has not performed its duties and discharged its obligations, and, while derelict itself, it seeks to compel a sovereign power to perform a duty for it.

There is no equity in appellant's contention. Here is a company with property admittedly worth $40,000,000, in reality worth a great deal more, whose stock sells upon the market for that. It pays six and eight per cent. dividends upon enormously watered stock—watered more than two hundred per cent., and still it adds large sums to its surplus each year and increases in value nearly one hundred per cent. in six years. To do this it must have great earning power, and whatever property is worth for income and sale, it is worth for taxation. This is the fundamental rule laid down by the supreme court, speaking through Justice Brewer, in the tax cases above cited. For these reasons we earnestly insist that the judge of the lower court did not err in dismissing the bill in this cause for want of equity.

The intent and purpose of this act, and of all similar

acts, is to make such companies as appellant bear its proportion of the burdens that its business of necessity casts upon the governments through which its lines extend—no more, no less. The scope and effect of this law and the duties of express companies under them is so forcibly and pertinently stated by Judge McCabe in the case of State v. Adams Express Co. et al., 144 Ind. 549, on page 560, where he says:

> "There is no complaint here that the assessment was too high, but the complaint is confined solely to the objection that the assessment is not on property. This, we think, we have shown is not true, either as a matter of law or fact. It is not surprising that the increase of burdens of taxation brought about by the act in question on the property of such companies should arouse complaints. Hitherto such companies, for want of proper legislation, have well-nigh escaped taxation in this state. It is but natural that the taxgatherer should be made an unwelcome visitor by many good people. But the good citizen should take comfort in the payment of his taxes when reminded that it is such payment that enables the majesty of the law to walk by his side, and shield and protect him against the lawless and violent, both day and night, in the enjoyment of his life, liberty and property.
>
> "So, too, these appellees have great need of such protection, and ought to contribute their just share to support the government that affords it."

There is no claim in this case that the actual value of the capital stock of appellant would not warrant the assess-

ment laid upon it in the state of Indiana; at least, there is no evidence in the record to this effect. And we submit there can be none.

The assessment as placed does not cast a burden upon the appellant greater than that cast upon other companies similarly situated.

For the foregoing reasons, we insist that the judgment of the court below should be affirmed.

Respectfully submitted,

CHAS. W. MILLER, *Attorney-General,*
Attorney for Appellee.

CASSIUS C. HADLEY,
Of Counsel.

Supreme Court of the United States.

OCTOBER TERM, 1869.

No. 154.

JAMES C. FARGO, as President of the American Express Company,

Appellant,

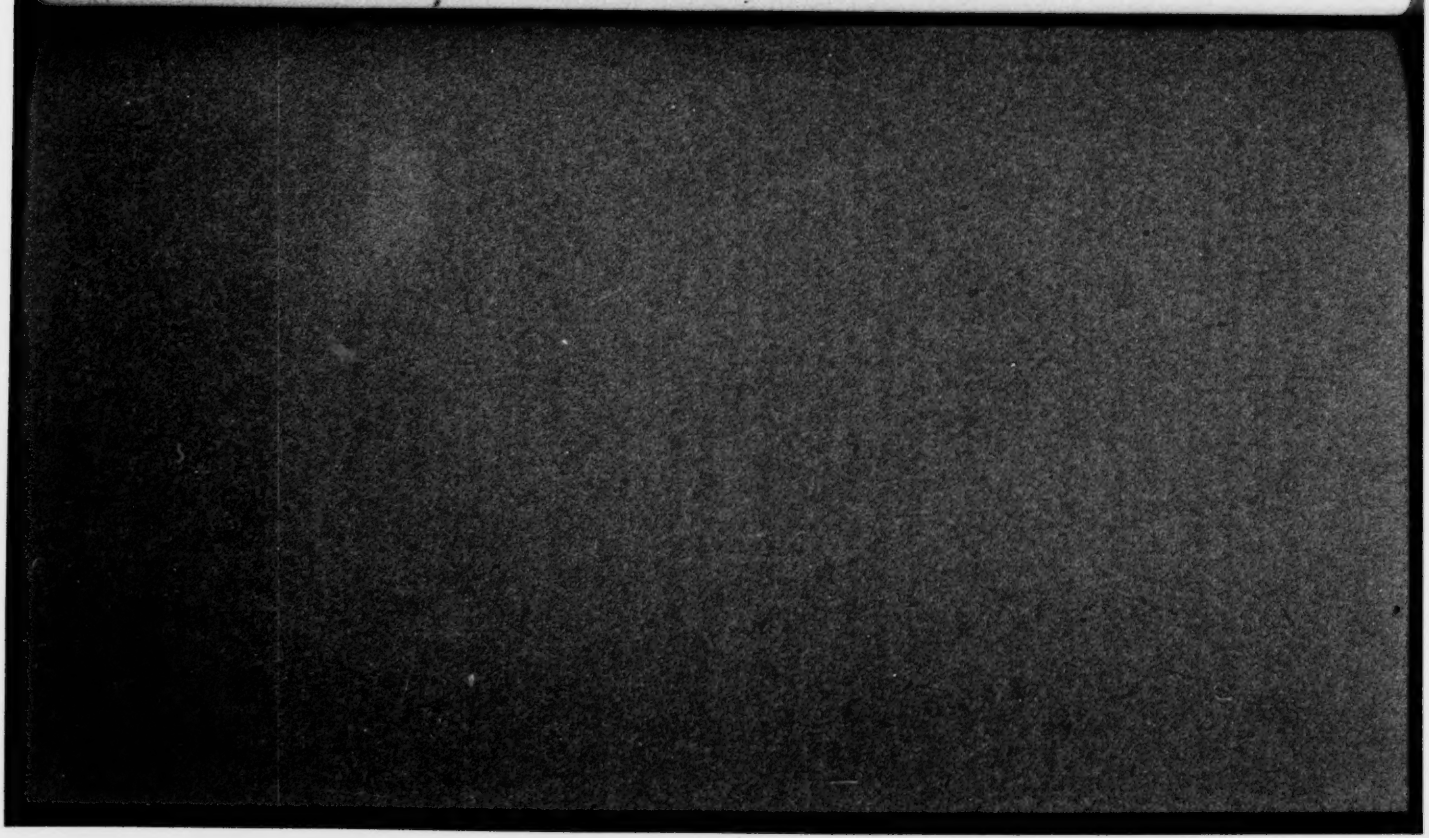
vs.

WILLIAM H. HART, Auditor of State of the State of Indiana.

BRIEF FOR APPELLANT.

LEWIS CASS LEDYARD,
Of Counsel for Appellant.

C. A. Seaquist, Walker and Cedar Streets, N. Y.



Supreme Court of the United States.

JAMES C. FARGO, as President of the American Express Company,
Appellant,

vs.

WILLIAM H. HART, Auditor of State of the State of Indiana,
Appellee.

This is an appeal from a decree of the Circuit Court of the United States for the District of Indiana, dismissing the appellant's bill.

The question involved relates to the administration, by the taxing authorities of the State of Indiana, of the law, the constitutional validity of which, and of similar laws providing for the taxation of the property of express companies, was the subject of examination by this Court in several cases arising in Kentucky, Ohio and Indiana.

Adams Express Co. vs. Ohio, 165 U. S., 194.
American Express Company vs. Indiana, *Ib.*, 255.
Adams Express Company vs. Kentucky, 166 U. S., 171.
Adams Express Company vs. Ohio, on petition for rehearing, 166 U. S., 185.

The question raised in those cases was whether the system of taxation provided by these laws violated the Constitution of the United States. The decision upheld the validity of the legislation. The question

raised in the present case is whether the practical administration of these laws by the taxing authorities of the State deprives the express company of rights secured to it by the Constitution.

A statement of the nature of the former controversy will aid to an understanding of that which is now presented.

The legislation assailed did not impose a franchise or privilege tax. The tax which it provided for was plainly a tax on *property*. The controversy was as to whether, under the guise of a tax upon property within the State, the legislation, by reason of the method employed for arriving at a valuation of such property, did not, in fact, impose a tax upon property having a situs without the State, and not subject to its taxing power.

The system provided was that which has become known as the "unit system." Adopted by the States, and sustained by this Court as a method of taxing railroad property (Maine vs. Grand Trunk Railway, 142 U. S., 217; Pittsburgh, &c., Railway vs. Backus, 154 U. S., 421) and sleeping car companies (Pullman's Palace Car Co. vs. Pennsylvania, 141 U. S., 18) it has been extended to the property of telegraph companies (Western Union Tel. Co. vs. Taggart, 163 U. S., 1), and by the decisions above referred to was sustained in its application to express companies. Its principal features were the valuation of the entire property of the company, wherever located, as a unit profit-producing plant, the aggregate market value of all the stock and bonds of the company being taken to establish the value of its entire property, and it was held that a fair proportion of this value, so ascertained, might be imputed to the property of the company within the taxing State, and that such fair proportion might be determined upon a mileage basis, thus imputing to the property within the State a proportion of the value of the total property equal to the proportion between the number of miles operated in such State and the total number of miles everywhere operated by the company.

The theory upon which such a system of valuation was applied to railroad property was based upon the proposition that in the case of a railroad line running through several States, each part of the road, in its relation to all other parts, possessed elements of value which it would not have if separated and segregated from the system and considered as an independent line of itself. The theory was that no better measure of value for the entire property could be taken than the amount which people were willing to pay for it, and that this value being represented in its securities, the aggregate value of the entire property was fairly measured by the aggregate market value of all the securities of the company. As to the apportionment of a part of this aggregate value of the whole to that portion of the line lying within the taxing State, this Court held that, in the absence of peculiar or exceptional circumstances, a mileage basis of apportionment was fair enough.

It was evident that there was an important distinction in the nature of things between the properties of railroad and telegraph companies on the one hand, and express companies on the other, and when the case of the express companies was presented to this Court, this distinction led to much argument and to a strong difference of opinion between the members of the Court, who were nearly evenly divided upon it.

In the case of a railroad or a telegraph company, there is a physical, tangible, profit-producing plant or system, the value of each part of which is undoubtedly affected and enhanced by the correlation between all parts of the whole; and to ascertain in any given case the exact relative value of each part, and to ascertain how much it contributes to the value of each other part and to the value of the whole, might well be a hopeless task. The unity in such a case is a unity of plant, of system, of operation; the whole property is devoted as a unit to a single purpose, and is incapable of division.

In the case of express companies, however, there is no such tangible, physical plant. There is nothing

which has a fixed and permanent situs. The business in which they are engaged is in its nature not the operation of a plant, but the rendering of services. They have no means of transportation of their own, but employ the facilities of railroad companies and other carriers for the forwarding of goods. The only property which they have in actual use in the business itself consists of horses, wagons, safes and office furniture, and these instrumentalities have, in fact, a definite and ascertainable value, as property, which is the same as that which may be attributed to similar horses, wagons, safes and office furniture owned by other people, and it was therefore claimed that to impute to them an enormously enhanced value based upon the value at which the business of the company and all its assets could be sold, as evidenced by the market value of its securities, would be, in substance and in fact, to import into the taxing State values not within its jurisdiction, and that an assessment upon property within the State at such enormously enhanced values would be, in substance and in fact, a taxation of property situated without the State.

The majority of the Court, however, declined to recognize this distinction as controlling, and sustained the legislation, holding that, while the physical unity which existed in the case of railroad and telegraph companies was lacking, there was, nevertheless, in the case of the property of express companies, a unity of use which would justify a system of taxation which viewed their property as a single unit and allotted to each State a fair proportion thereof.

It was claimed by the express companies in these cases that they possessed a large amount of real estate, stocks, bonds and other investments, all of which were tangible property which had a definite and actual situs in other States than Ohio, Kentucky and Indiana, and that the necessary result of such a view would be to subject this foreign situated tangible property to taxation in Ohio, Kentucky and Indiana.

This objection was forcibly pressed upon the Court

in the petition for a rehearing. In the original opinion, Mr. Chief Justice FULLER had said (165 U. S., 227):

> "There is here no attempt to tax property "having a situs outside of the State, but only to "place a just value on that within. Presump- "tively all the property of the corporation or "company is held and used for the purposes of "its business, and the value of its capital stock "and bonds is the value of only that property so "held and used.
>
> "Special circumstances might exist, as indicated "in Pittsburgh, Cincinnati, &c., Railway v. Backus, "154 U. S., 421, 423, which would require the "value of a portion of the property of an express "company to be deducted from the value of its "plant as expressed by the sum total of its stock "and bonds before any valuation by mileage "could be properly arrived at, but the difficulty "in the cases at bar, is that there is no showing "of any such separate and distinct property which "should be deducted, and its existence is not to "be assumed. It is for the companies to present "any special circumstances which may exist, and, "failing their doing so, the presumption is that "all their property is directly devoted to their "business, which being so, a fair distribution of "its aggregate value would be upon the mileage "basis."

Upon the application for a rehearing, Mr. Justice BREWER said (166 U. S., 217):

> "The importance of the questions involved, the "close division in this court upon them, and the "earnestness of counsel for the express companies "in their original arguments, as well as in their "briefs on this application, lead those of us who "concurred in the judgments to add a few ob- "servations to what has hitherto been said."

After saying that the statutes in question contemplated only an assessment and levy of taxes upon the property of the express companies situated within the respective States, he said:

"The only really substantial question is "whether, *properly understood and administered*, "they subject to the taxing power of the State "property not within its territorial limits. The "burden of the contention of the express com- "panies is that they have within the limits of the "State certain tangible property, such as horses, "wagons, etc.; that that tangible property is "their only property within the State; that it "must be valued as other like property, and upon "such valuation alone can taxes be assessed and "levied against them.

"But this contention practically ignores the ex- "istence of intangible property, or at least denies "its liability for taxation. In the complex civili- "zation of to-day a large portion of the wealth of "the community consists in intangible property, "and there is nothing in the nature of things or "in the limitations of the Federal Constitution "which restrains a State from taxing at its real "value such intangible property. * * * Now, "whenever separate articles of tangible property "are joined together, not simply by a unity of "ownership, but in a unity of use, there is not in- "frequently developed a property, intangible "though it may be, which in value exceeds the "aggregate of the value of the separate pieces of "tangible property. Upon what theory of sub- "stantial right can it be adjudged that the value "of this intangible property must be excluded "from the tax lists, and the only property placed "thereon be the separate pieces of tangible prop- "erty."

"The first question to be considered therefore "is whether there is belonging to these express

" companies intangible property—property differ-
" ing from the tangible property—a property
" created by either the combined use or the man-
" ner of use of the separate articles of tangible
" property, or the grant or acquisition of fran-
" chises or privileges, or all together. To say that
" there can be no such intangible property, that
" it is something of no value, is to insult the com-
" mon intelligence of every man."

After saying that it is a cardinal rule that should never be forgotten that whatever property is worth for the purposes of income and sale, it is also worth for the purposes of taxation, Mr. Justice BREWER continues :

" Suppose an express company is incorporated
" to transact business within the limits of a State,
" and does business only within such limits, and,
" for the purpose of transacting that business,
" purchases and holds a few thousands of dollars'
" worth of horses and wagons, and yet it so meets
" the wants of the people dwelling in that State,
" so uses the tangible property which it possesses,
" so transacts business therein that its stock be-
" comes in the markets of the State of the actual
" cash value of hundreds of thousands of dollars.
" To the owners thereof, for the purposes of in-
" come and sale, the corporate property is worth
" hundreds of thousands of dollars. Does sub-
" stance of right require that it shall pay taxes
" only upon the thousands of dollars of tangible
" property which it possesses ? * * *

" A distinction must be noticed between the
" construction of a state law and the power of a
" State. If a statute, properly construed, con-
" templates only the taxation of horses and
" wagons, then those belonging to an express
" company can be taxed at no higher value than
" those belonging to a farmer. But if the State
" comprehends all property in its scheme of taxa-

" tion, then the good-will of an organized and " established industry must be recognized as a " thing of value. The capital stock of a corpora- " tion and the shares in a joint stock company " represent not only the tangible property, but " also the intangible, including therein all cor- " porate franchises and all contracts, privileges " and good-will of the concern."

He then takes up the case of the Adams Express Company and shows that, according to the returns filed with the State Auditor of Ohio, the market value of the company's stock was over $16,000,000, but that the only tangible property returned amounted to about $4,000,000. He continues:

" The Adams Express Company has, according to " its showing, in round numbers $4,000,000 of " tangible property scattered through different " States, and with that tangible property thus " scattered transacts its business. By the busi- " ness which it transacts, by combining into a " single use all these separate pieces and articles " of tangible property, by the contracts, franchises " and privileges which it has acquired and pos- " sesses, it has created a corporate property of the " actual value of $16,000,000. Thus, according to " its figures, this intangible property, its fran- " chises, privileges, etc., is of the value of $12,- " 000,000, and its tangible property of only $4,- " 000,000. Where is the situs of this intangible " property? Is it simply where its home office is, " where is found the central directing thought " which controls the workings of the great ma- " chine, or in the State which gave it its corporate " franchise; or is that intangible property dis- " tributed wherever its tangible property is " located and its work is done? Clearly, as we " think, the latter. Every State within which it is " transacting business and where it has its prop-

" erty, more or less, may rightfully say that the
" $16,000,000 of value which it possesses springs
" not merely from the original grant of corporate
" power by the State which incorporated it, or
" from the mere ownership of the tangible prop-
" erty, but it springs from the fact that that tangi-
" ble property it has combined with contracts,
" franchises and privileges into a single unit of
" property, and this State contributes to that
" aggregate value not merely the separate value
" of such tangible property as is within its
" limits, but its proportionate share of the
" value of the entire property. That this is
" true is obvious from the result that
" would follow if all the States other than the one
" which created the corporation could and should
" withhold from it the right to transact express
" business within their limits. It might continue
" to own all its tangible property within each of
" those States, but unable to transact the express
" business within their limits, that $12,000,000 of
" value attributable to its intangible property
" would shrivel to a mere trifle.

* * * * * *

" It is said that the views thus expressed open
" the door to possibilities of gross injustice to
" these corporations, through the conflicting action
" of the different States in matters of taxation.
" That may be so, *and the courts may be called*
" *upon to relieve against such abuses.*"

* * * * * *

In answer to the suggestion that the company might have a large amount of investments situated without the taxing States, Mr. Justice BREWER, speaking for the majority of the Court, said (166 U. S., 222) :

" It is suggested that the company may have
" bonds, stocks or other investments which pro-
" duce a part of the value of its capital stock, and

" *which have a special situs in other States* or are " exempt from taxation. If it has, let it show the " fact. Courts deal with things as they are, and " do not determine rights upon mere possibilities. " If half of the property of the Adams Express " Company, which by its own showing is worth " $16,000,000 and over, is invested in United " States bonds, and therefore exempt from taxa- " tion, or invested in any way outside the busi- " ness of the Company and so as to be subject to " purely local taxation, let that fact be disclosed, " and *then* if the State of Ohio attempts to in- " clude within its taxing power such exempted " property, or *property of a different situs*, it " will be time enough to consider and determine " the rights of the company. That if such facts " exist they must be taken into consideration by a " State in its proceedings under such tax laws as " are here presented has been heretofore recog- " nized and distinctly affirmed by this court. " *Pittsburgh, Cincinnati, &c., Railway Co. v.* " *Backus*, 154 U. S., 421, 443; *Western Union* " *Telegraph Co. v. Taggart*, 163 U. S., 1, 23; " *Adams Express Co. v. Ohio*, 165 U. S., 194, 227. " Presumably all that a corporation has is used in " the transaction of its business, and if it has " accumulated assets which for any reason affect " the question of taxation, it should disclose them. " It is called upon to make return of its property, " and if its return admits that it is possessed of " property of a certain value, and does not dis- " close anything to show that any portion thereof " is not subject to taxation, it cannot complain if " the State treats its property as all taxable."

It may be said, in explanation of the failure of the express companies more fully to disclose the amount of their tangible property in the cases which were thus decided by this Court, that the question involved in those cases was not so much the administration of the

tax law by the State officials as the constitutionality of the law itself.

Immediately after the decision, the American Express Company, in the hope, which we regret to say has not been justified, that the State Board of Tax Commissioners of Indiana would be guided in their official action by the expressions of this Court from which we have freely cited, determined to make a full disclosure to those authorities of all facts and circumstances bearing upon their property.

Accordingly, the company prepared a return of its condition on the first of April, 1898, and filed the same with the State Board. This return contained all the information and statistics required by the State Law, and in addition a full statement of its property and its nature. The assessed value of all the tangible property of the company in Indiana was $16,015.

It appeared affirmatively on the face of the return that the company possessd intangible property in real estate, stocks, bonds, securities and investments exceeding the aggregate market value of its entire capital stock, and that *therefore, the market value of its capital stock included no intangible property whatever.*

The only result of the frank disclosure made by the company was the imposition by the State Board of an assessment of $809,253, being at the rate of $450 per mile upon its Indiana mileage, *an assessment nearly twice as great as that which was before this Covrt in the cases already decided*, which was at the rate of $250 per mile.

Within the time allowed by the law of Indiana for a review of assessments, the company appeared before the board and protested by counsel and by filing written protests, all to no purpose. The return which the company made specifically called the attention of the board to the opinions of this Court rendered by Mr. Chief Justice FULLER and Mr. Justice BREWER, as furnishing the foundation for the company's contention that its physical, tangible property situated outside of the State of Indiana had a

definite local situs and was subject to local taxation where situated, and that the value thereof could not be included in the estimate to be made by the board of its property within the State of Indiana; and, moreover, that all but a very small proportion of this foreign-situated property was not used in the business of the company, and constituted no part of its express plant, but *consisted of* investments by the company, the results of the accumulation of earnings through a series of years, and that they were held for mere investment purposes, in like manner as similar properties are held for investment by persons not engaged in the express business.

Similar proceedings took place in respect to the assessments for 1899, 1900, and 1901. In each year the company filed a return, carefully drawn and giving full information as to its property. In each year, too, it protested and applied for a modification of the assessment. It offered to exhibit to the board, or any authorized agent, the securities held by it in the safe deposit vaults in New York.

During these years the condition of the company changed, from time to time. There was a material difference in the value of its capital stock between 1898 and 1901. The amount of its assets also changed. The proportion of its mileage in the State of Indiana to its total mileage changed. None of these changes had any effect upon the action of the board. Each year they made and adhered to the same arbitrary assessment of $450 a mile.

The proceedings of the State Board for each year are embodied in the record. Appropriate reference will be made to them hereafter. At no time was any demand or request made by the Auditor of State, or any member of the board, upon the company for a further showing of facts than was made in its annual returns for the years involved, except only as appears from the record of what took place at the annual session of the board, which is also embodied in the record (Record, p. 306).

The bill in this case was filed by James C. Fargo, as president of the American Express Company, in the Circuit Court of the United States for the District of Indiana, against Americus C. Daily, as Auditor of State of the State of Indiana, to restrain the certification to the respective county auditors of the assessment for the year 1898, to procure an adjudication that the assessment was void and to set aside the lien thereby attempted to be created upon the property in Indiana as a cloud on the title. The bill sets forth that the complainant Fargo is a resident of New York, that the defendant is a resident of Indiana; it sets forth the nature of the American Express Company, which is not a corporation but a partnership association conducting the express business; it exhibits the return made by the company the particulars of which will be hereafter stated, the making of the preliminary assessment thereon by the board, the protest by the company, setting forth its objections thereto upon constitutional grounds, and alleges that the assessment was in violation of the interstate commerce clause of the Constitution and of the fourteenth amendment, as depriving the members of the express company of their property without due process of law, in that it assessed for taxation purposes in Indiana tangible property having a definite situs without the State, and amounted to a denial of the equal protection of the law; alleges that under the laws of Indiana the assessment will cast a cloud upon the title to the company's real estate, and that the bill is filed to prevent multiplicity of suits through the bringing of numerous suits in each of the various counties of the State for the collection of taxes, or actions by the company to restrain such collection.

By stipulations between the parties the assessments of 1899, 1900 and 1901 were made the subject of supplemental bills. The State interposed demurrers to the bills which were overruled, and thereafter answers were interposed and issue joined.

A word may be said here upon a point which will be

further referred to. In the returns of the company for the years under consideration, it included in its statement of total mileage a large number of ocean routes upon which it conducted the express business. This, of course, very largely reduced the percentage of mileage in the State of Indiana. In the proceedings before the State Board, exception was taken to the company's embracing these ocean routes in its statement of total mileage, largely for the reason that it had not included them in the reports for former years. This, however, was explained on behalf of the company by the fact that shortly prior to 1898 it had made a change in the method of conducting its European and other foreign business, and established its own offices in Europe, and made arrangements with various steamship lines, so that, in consequence of such change, the whole business was conducted in substantially the same way as its other express business was conducted.

A preliminary injunction having been granted, the cause came on for final hearing and the bills were dismissed, the Court holding

1. That the Indiana Statute was constitutional.

2. That the question whether ocean route mileage should be included as part of the total mileage of the company, and also the question of the value of the company's property in Indiana, were questions exclusively for the determination of the State Board; that its determination could not be overturned by inquiring whether the Board gave proper weight to evidence before it; that the finding of the Board in these respects could not be set aside in the absence of fraud, which was not charged; and that the Court would not be justified by the evidence in assigning fraud or bad faith to the Board, its error, if any, being an error of judgment unmixed with fraud, in making an excessive valuation of the company's route in Indiana (Record, p. 126).

Assignment of Errors.

The Assignment of Errors is found at page 127 of the Record.

The following will be insisted upon in argument:

I. That the action of the State Board of Tax Commissioners was in violation of the Fourteenth Amendment of the Constitution.

II. That the same was in violation of the Interstate Commerce Clause of the Constitution.

III. That the said board either included in the assessment of the company's property in Indiana the value of tangible property having a definite situs without that State, or imposed upon the company an arbitrary assessment as a condition of its transacting its interstate business in the State of Indiana.

IV. That the Court erred in dismissing the bills and in holding that the question presented was merely one of excessive valuation.

V. That the Court erred in holding that the question of the amount of the company's total mileage was a matter for the exclusive determination of the board.

VI. That the Court erred in holding that the board's determination upon these points could not be attacked, except for fraud, and that fraud was not alleged or proved, and that it erred in not holding that the company was entitled, under the Indiana statute to include its ocean routes in the amount of its total mileage.

ARGUMENT.

First Point.

That no State can tax tangible property owned by a non-resident, and having an actual situs without the State, cannot be doubted. It is a principle which has again and again been affirmed by this Court, that such taxation is a taking of property without due process of law.

Louisville, etc., Ferry Co. vs. Kentucky, 188 U. S., 385.
Adams Express Company vs. Ohio, 165 U. S., 194.
Adams Express Company vs. Kentucky, 166 U. S., 171.
Adams Express Company vs. Ohio, 166 U. S., 185.
Pittsburgh, etc., Ry. Company vs. Backus, 154 U. S., 421.
Cleveland, etc., Ry. Company vs. Backus, 154 U. S., 439.

It matters not whether legislative authority exists for the illegal act, or whether it is done in pretended pursuance of such authority, or whether it is confessedly a bare-faced exercise of arbitrary power. It is the thing itself which may not be done.

In Reagan vs. Farmer's Loan & Trust Co., 154 U. S., 362, 390, this Court, speaking by Mr. Justice BREWER, said:

> "Neither will the constitutionality of the statute, if that be conceded, avail to oust the Federal Court of jurisdiction. A valid law may be wrongfully administered by officers of the State, and so as to make such administration an illegal burden and exaction upon the individual. A tax law, as it leaves the legislative hands, may not be obnoxious to any challenge, and yet the officers charged with the administration of

that valid tax law may so act under it in the matter of assessment or collection as to work an illegal trespass upon the property rights of the individual. They may go beyond the powers thereby conferred, and when they do so the fact that they are assuming to act under a valid law will not oust the courts of jurisdiction to restrain their excessive and illegal acts."

The Indiana statute for the taxation of express companies, as construed by the highest Court of the State, does not contemplate or authorize the taxation of tangible property having a situs without the State (State of Indiana vs. American Express Company, 144 Ind., ; Western Union Telegraph Company vs. Taggart, 141 Ind.,); and, as thus construed, its validity has been upheld by this Court.

It is, therefore, not the validity of the statute, but the administration of it by the State officials which we attack in the present suit. If, as matter of fact, these officials in making the assessment included therein and assessed as part of the property within the State, actual tangible property having a definite situs without the State, then they went beyond the powers conferred by the statute and worked an illegal trespass upon the property rights of the appellant's company, which it is as much entitled to restrain as if it had been specifically authorized by an unconstitutional statute.

Cummings vs. National Bank, 101 U. S., 153.
Yick Wo. vs. Hopkins, 118 U. S., 356.

Second Point.

The ultimate justification by this Court of its view that the property of express companies may legitimately be considered a unit for purposes of taxation, is that thereby the State is enabled to tax the good

will or earning power—what Mr. Justice BREWER calls the *intangible* property.

It is submitted with a good deal of confidence that, in the nature of things, the theory cannot go further than that.

The Court has been careful, in a number of cases involving railroad taxation, to draw attention to the fact that there may be exceptional cases in which even that class of property may not be assessed on the mileage basis upon the theory that the whole property is a single unit, without violating the rule which confines the taxing power of the State to property within its limits.

As instances of such exceptional cases it has given the case of a railroad situated in more than one State and having in one State extensive terminals of great value, and no property of corresponding value in the other; or having an accumulation of rolling stock in one State wholly out of proportion to that which is in the other. These are circumstances, it is said, which the taxing authority is bound to take into consideration.

The instances given are of an excessive value of the *physical plant* in one State, with no corresponding value in that portion of the plant situated in the taxing State, the entire plant being a physical unit.

But in the case of express companies there is no such physical unit, unless it be deemed to consist of the horses, wagons, safes and other chattels, which may be generally described as equipment.

The unity which this Court found to exist in the express company cases was not a physical unity. The idea of such a unity was expressly disclaimed by the Court. What it did find to exist was a unity of use, through which the business of the company in each State was aided, developed and strengthened by its business in every other State. It was in this sense that the Court held that the unit theory of taxation might be legitimately applied to express companies.

What was this in substance but saying that the good-

will of the business might be apportioned among the States as a proper subject of taxation?

Upon the decision of the motion for re-argument, the majority of the Court made its position still more plain upon this point. The entire opinion of Mr. Justice BREWER is devoted to showing that what may be rightly reached by such a system of taxation in relation to express companies is their *intangible* property—that is, their good-will, franchises, contracts, privileges and the like. His whole argument has for its object to demonstrate that the legitimate effect of such legislation, properly construed, as applied to these companies, is to tax that *intangible* value which is found in the excess of the market value of the entire capital stock of the company over the value of its *tangible* property—and it is precisely for the reason that it taxes only this *intangible* property or good-will, which because it is *intangible* is incapable of having an actual situs, that such a law is not open to the charge of taxing property situated beyond the taxing power of the State.

It matters not whether the tangible property be used in the business or not. If it be tangible property, actually situated without the State, any attempt by the State to tax it must fail.

The stocks and bonds owned by the American Express Company and kept by it in a safe deposit vault in the City of New York, are capable of, and have, an actual situs. And this, whether they are employed in the business of the company or not.

Its real estate in other states, whether used for express purposes or not, certainly has an actual situs, and is exempt from taxation by Indiana.

What difference can it make in the power of Indiana to tax these *tangible* personal and real properties, situated beyond its boundaries, that the ownership of them by the company may enhance its credit and enable it for that reason more successfully to prosecute its business?

Those properties are not increased in value by the fact that they are owned by a company which carries

on a large express business in many states. They have in themselves a well defined and ascertained market value, and are worth just so much and no more, by whomsoever they may be owned.

If the company's credit is enhanced and its business capacity increased by the fact that it owns a certain amount of such securities and real estate, this circumstance may, indeed, result in the creation of an intangible value or property, a fair proportion of which may be properly assessed by the State of Indiana, under this legislation, as interpreted by this Court, but this is not because these *tangible* properties are used in the business, but because the company possesses certain *intangible* property or good-will which may be justly apportioned among the various states in which its business is carried on—each being entitled to tax a fair proportion of it.

Third Point.

The State Board, in assessing the property of the company within the State, *did, intentionally and knowingly, include the value of its tangible property having a definite and actual situs without the State. The question presented, therefore, is not one of excessive valuation by a board having jurisdiction to make an assessment, but one of action without any jurisdiction whatever.*

A. *The statute, under which they were acting, in terms, required them to do so.*

The Tax Act, as amended in 1893, required every express company to make annually, to the Auditor of State, a return as of April 1st, showing:

1. The total capital stock.

2. The number of shares issued.

3. Its principal place of business.

4. The market value of the shares, and, if they have none, then the actual value.

5. The location and assessed value of its real estate, structures, fixtures and appliances in Indiana.

6. The location and assessed value of its real estate situated outside of Indiana, and not used directly in the conduct of the business.

7. Mortgages upon its property.

8. (*a*) "The total length of the lines or routes over which such company * * * transports such merchandise, freight or express matter."

(*b*) The total length of such lines or routes as are outside the State of Indiana.

(*c*) The length of such lines or routes within each of the counties and townships within the State of Indiana.

See Horner's Annotated Statutes, § 6521*m*.

It is then made the duty of the auditor to examine such return, "and if he shall deem the same insufficient, or in case he shall deem that other information is requisite, he shall require such officer to make such other and further statements as said auditor of State shall call for" (*Ib.* § 6521*o*).

The auditor shall then upon the meeting of the State Board of Tax Commissioners "lay such statements, with such information as may have been furnished him, before said board * * *, who shall thereupon value and assess the property of each company * * * in *the manner hereinafter set forth*, after examining such statements and after ascertaining the value of such properties therefrom, and from such other information as they may have or obtain. For that purpose they may require the agents or officers of said company * * * to appear before them with such books, papers or statements as they may require, or they may require additional statements to be made to them, and may compel the attendance of witnesses, in case they shall deem it necessary, to enable them to

ascertain the true cash value of such property" (*Ib.* § 6521*p*).

Then follow directions concerning the manner of assessment:

> "Said board * * * shall first ascertain the true cash value of the *entire property* owned by said company * * * from said statements, or otherwise, *for that purpose taking the aggregate value of all the shares of capital stock in case such shares have a market value,* and in case they have none, taking the actual value thereof. * * *
>
> "Said board * * * shall, for the purpose of ascertaining the true cash value of the property within the State of Indiana, next ascertain from said statements, or otherwise, the assessed value for taxation in the localities where the same is situated of the several pieces of real estate situate without the State of Indiana, and not specifically used in the general business of such company * * * which said assessed value for taxation shall be by said board deducted from the gross value of the property, as above ascertained. Said Board * * * *shall next ascertain and assess* the true cash value of *the property* of such company * * * *within the State of Indiana, by taking the proportion of the whole aggregate value of said company * * * as above ascertained,* after deducting the assessed value of such real estate without the State, * * * *which the length of lines or routes within the State of Indiana bears to the whole length of the lines or routes of such company * * * and such amount so ascertained shall be deemed and held as the entire value of the property of said company * * * within the State of Indiana.*
>
> "From the entire value of the property within the State so ascertained there shall be deducted by the said board the assessed value for taxation

> of all the real estate, structures, machinery and appliances within the state * * * *and the residue of such value so ascertained*, after deducting therefrom the assessed value of such local properties, *shall be by said board assessed to said association.*" *Ib.*, 6521, q.

The board is then to ascertain "the value per mile of the property of such company * * * within the State of Indiana" by dividing this resultant value by the number of miles within the State, and this is to be apportioned to the various counties upon a mileage basis.

Ib., §§ 6521, r; 6521, s.

Such are the provisions of the act under which the assessments in controversy were made. Can anything more inflexible and rigid be imagined?

According to its plain terms, no room is left for the exercise of judgment or discretion by the board.

The market value of the stock, if it have one, is made the sole test of the valuation to be made of the company's entire property.

A specific deduction is directed of foreign situated real estate, not used directly in the conduct of the business—and that at its assessed and not at its actual or market value, although it must be plain that it is at the latter that it enters as a factor into the establishment of a market value of the stock.

Next comes the direction to ascertain the property within the State by assigning to the State an amount of the whole property as thus ascertained, by apportioning it through an absolutely rigid mathematical process upon a ratio of mileage within the State to total mileage.

The exercise of such judgment and discretion in exceptional cases, as this Court has repeatedly declared is necessary to save such laws from condemnation, as providing in substance and effect for a taxation of property without the State, is forbidden by this Indi-

ana statute: for it would be a plain disregard of its distinct and explicit commands.

B. Our present proposition that the law under which the board acted required them to value tangible property situated without the State, is not satisfactorily answered by saying that the Supreme Court of Indiana, by a strained construction of the act, may have saved it from condemnation on constitutional grounds by holding that it was not intended to prevent the board from "taking into consideration" such exceptional circumstances as might be presented to them *(Western Union Tel. Co. vs. Taggart, 141 Ind.)*.

Of what avail is it to the company taxed that the board "consider" its situation if the result is to be precisely what it would have been without such "consideration"?

The statute contains no directions to the board to make any deductions by reason of such "consideration." As we have seen, its directions are positive and distinct. It prescribes in terms a rigid, mathematical process according to which the board is directed to compute the assessment; and what likelihood is there of any State officers acting under such a statute, departing from its express directions in order to save the constitutional rights of non-resident corporations and associations?

Do not the facts in the case at bar testify most cogently to the utter worthlessness of such protection from wrong and injustice?

C. Not only did the statute in terms require the foreign situated tangible property to be included in the assessment, but that it was in fact so included is admitted by the pleadings.

The bill set forth the protest of the company to the

State Board (Record, p. 10), and alleged that it was true (Record, p. 13), and charged its statements as independent allegations of the bill (p. 13).

In the fourth paragraph of this protest it was alleged that the "assessment includes property which is not and never has been physically within the State of Indiana, and which is not and never has been within the jurisdiction of the State of Indiana for purposes of taxation;" and in the eighth paragraph of the protest the facts relating to this were set forth in detail (p. 11).

The bill further alleged (p. 16), that the assessment included "personal property of said company owned and held by said company and physically situate in the City of New York in the State of New York, and not used by it in connection with its express business and forming no part of its express business plant."

The answer (p. 54) admits the filing of the protest. It contains no specific denial of the matters alleged in the protest, but says (p. 56): "that if the American Express Company possessed stocks and bonds of corporations and companies, bills receivable, mortgage bonds and moneys loaned on collateral, as stated in the bill and supplemental bill, the same was held, employed and used by said complainant for the purpose of transacting its express business, and that such personal property and securities were necessarily and properly used and employed in maintaining and continuing said business," and, again, at the foot of page 56:

> "That said fifteen and a half million dollars in securities is held and used by the American Express Company as a part of the necessary capital of its business, and is employed in the management of said business, and is essential to its profitable continuance.
>
> "That so much of said capital as is invested in securities of the kind named in said bill and supplemental bill is used and employed not only in and for the City and State of New York, but

generally in the management and conduct of the business of said co-partnership, and that such securities form a part of its capital and business, and are in constant use wherever said company does business, both in the State of Indiana and elsewhere throughout the United States."

And the only denial that these securities were in fact assessed by the board is found at page 58:

> "Said defendant denies that said assessment * * * assesses for taxation purposes in Indiana personal property of said American Express Company owned or held by it in the City of New York and State of New York, *which was not used by said company in connection with its express business in Indiana or elsewhere*, as stated in said bill and supplemental bill of complainant."

Tested by ordinary rules of common sense, what is the meaning of these allegations and of this denial?

Are they open to any other construction than the board did in fact assess these foreign-held and foreign-situated tangible properties, and sought to justify their action on the ground that they contributed to the company's credit and were, therefore, *used* in the business and constituted a part of the unit which the board was to value?

D. Furthermore, the proceedings of the State Board show that, as matter of fact, the value of this foreign tangible property was included in the assessment.

1. The return made by the company for 1898, in addition to the statements required by the statute, specifically stated (Record, p. 268):

That the company was "the owner of a large amount of tangible property which constitutes no part of its plant for the transaction of the express business, and all of which has an actual situs without the State of Indiana. Said property so owned by it consists of both real and personal property. The real estate is situated in New York, Massachusetts and other States, and the personal property is, and for many years has been, actually situated in the City of New York, where the company has its principal office and where the said personal property is subject to local taxation."

It then proceeded to show that these foreign situated properties were of the following market value :

Real estate not used in the business		$1,983,534 30
Personal property, stock, bonds and other securities and money loaned on collateral, none of which were used in the express business		15,501,344 33
Real estate used in connection with the business for offices, stables, &c.		3,076,438 00
Personal property, constituting equipment, horses, wagons, supplies, &c., &c.	$1,505,738 72	
Of which there was in Indiana less than	8,000 00	1,497,738 72
Total		$22,059,055 35
While the market value of the capital stock, $18,000,000 @ 120, was		*21,600,000 00*
Leaving as the *excess of tangible property situated outside of Indiana, above the entire market value of the capital stock*		459,055 35

The return then continued (Record, p. 269):

> "As appears from this return and the foregoing statements therein contained, the American Express Company on the first day of April, 1898, was the owner and in possession of actual tangible property, situated outside of the State of Indiana, of a market value exceeding the market value of the entire aggregate interests of the associates who are its members, and it claims that the State Board of Tax Commissioners of Indiana have no right or authority in law to assess its property in the State of Indiana under the Act of March 6th, 1893, under which this report is made, at any sum whatever, for that it is their duty in proceeding under said act to deduct from the market value of the aggregate interests of the associates the actual value of all the real estate belonging to said Company, situated outside of the State of Indiana, and of all the tangible personal property belonging to said Company, and situated outside of said State."

It then (p. 270) referred to the opinions of Mr. Chief-Justice FULLER and Mr. Justice BREWER, in the express company cases reported in 165 U. S. and 166 U. S. as furnishing the ground upon which the company's claim was founded.

Upon the filing of this return, no further return or information was asked from the company.

Upon the return as filed, the board assessed the company's property in Indiana at $450 per mile, which for its 1,798.34 miles of express routes within the State, *amounted to the enormous sum of $809,253.*

The company filed a protest again insisting upon the deduction of foreign assets, and declaring that the assessment, as made, included them (Record, p. 10).

It also appeared before the board by counsel, and argument was made upon the question as to whether the foreign assets must not be excluded—at least to the extent of the investment securities in New York, not used in the business.

The sole result was an inquiry by the chairman as to how large a tax that would give Indiana:

"THE CHAIRMAN: Have you figured that out, Mr. Daniels?

"MR. DANIELS: Yes.

"THE CHAIRMAN: What do you get as a result?" (Record, p. 203).

Then the chairman asked what other States have a similar statute to Indiana, and what the assessment was in those States: Ohio and Kentucky.

Then the following colloquy:

"COMMISSIONER BUSKIRK: Mr. Daniels, do you say your capital stock is $18,000,000?

"MR. DANIELS: Yes.

"COMMISSIONER BUSKIRK: And its market value was, on the first day of April, how much?

"MR. DANIELS: $1.20, making $21,600,000.

"COMMISSIONER BUSKIRK: What amount do you say should be deducted from that because it is not used in your express business?

"MR. DANIELS: $15,000,000.

"COMMISSIONER BUSKIRK: Why should it not be included?

"MR. DANIELS: $21,600,000 is the aggregate of all of the property of the American Express Company; $15,501,344.33 is bonds, stocks and notes held in the State of New York and not used in the express business. Our proposition is that that $15,000,000 should be deducted from the $21,600,000, because the difference represents the mileage of lines or routes.

"COMMISSIONER BUSKIRK: That $15,000,000 goes in to repay the capital stock, does it not?

"MR. DANIELS: Yes, but you are not assessing the capital stock. You are assessing the property —the unique form of property which is called 'express lines or routes,' and our proposition is

that that amount does not include any physical, tangible property, like bonds and notes, not used in the Express business" (p. 206).

Certain questions were asked by the Commissioners concerning the inclusion by the company of its ocean routes in its total mileage, and at the end the chairman said: "We will take this matter under consideration."

The above includes all that was said on the subject of the company's property.

The following day the Commission met and denied the application of the company to modify the assessment (Record, p. 207).

Such were the proceedings for the year 1898.

In the following year, 1899, the company made its return in the same form as that above stated. By reason, however, of an increase in the market price of the capital stock, it was unable to show that it had no tangible property whatever.

By this return its capital stock of $18,000,000 was shown to be worth 140—

Equivalent to	$25,200,000 00
Its tangible property of the same character as that shown in the former return was shown to have a market value of	23,248,005 31
Leaving as the total of its intangible property	$1,951,994 69

Upon this return the board made the same assessment of $450 a mile as in the former year, making a total assessment of $809,253, which was equal to 41 per cent. of the entire intangible property of the company, whereas the Indiana mileage was but a trifle over one per cent. of the total mileage of the company,

if its ocean lines were included, and a little over five per cent of its total railroad mileage alone.
Record, page 272.

Again the company filed a written protest similar to that which had been filed the year before (Record, page 249). Again it appeared before the board by counsel.

The proceedings which then took place are set forth on pages 212 to 253. The attention of the Court is particularly called to these proceedings, because we claim that it appears upon the face of them that there were but two questions at issue between the company and the State Board : First, whether the ocean mileage could be included in the total mileage. Second, whether the foreign-held and foreign-situated assets, real and personal, must not be excluded from the assessment made by the board ; and that it was assumed both by the board and the company's representatives upon this hearing that the assessment of $450 per mile *did* include the tangible property of the company situated outside of Indiana.

Counsel for the company (Record, page 214) after referring to the remark of Mr. Justice BREWER on the petition for the rehearing in the Ohio cases in the Supreme Court of the United States, to the effect that there was no proof before the Court that the company possessed tangible investments in New York, said :

> " On that suggestion, last year the American Ex-
> " press Company filed a statement showing that over
> " fifteen million dollars, out of the twenty million
> " dollars of value of its capital stock, was invested
> " in bonds and stocks, and money loaned and at
> " interest on mortgages, and in large buildings in
> " Buffalo, New York and other places, that were
> " rented to other people—office people and the
> " like. We offered then to exhibit these things,
> " or to make such proof as the Board might wish,
> " if they have any doubt as to whether they were

" in existence and not in use in the express busi-
" ness. The Board did not call for any other
" proof, and we imagined then, and imagine now,
" *it was not a question of fact that the Board dis-*
" *tributed this on, but a question of law, purely.*
" In other words, that the Board thought, that be-
" ing true, whether this property is used in the
" express business or not, as long as it gives value
" to this stock—and it certainly does that—be-
" cause its dividends are paid out of the earnings
" of this property, when the Express Company
" loses money as it does at times; that if this
" property is adding value to the stock, it is im-
" material whether it is used in the express busi-
" ness or not, that it is owned by the Express
" Company, and therefore we will apportion that
" value to the miles in this State. That is what
" the Board, in effect, said. We then appealed to
" the Court. We asked for a preliminary injunc-
" tion from Judge Woods. It was granted. There
" was a motion made then by the Attorney-Gen-
" eral to dissolve that injunction. It was fully
" argued and that motion was denied, and the
" injunction still stands. Now, it seems to me,
" that the main question before the Board that
" we wish to present is this: Whether or not the
" Board will follow the suggestion of the Supreme
" Court of the United States, as I ask you to do,
" and allow out of this total value, the value of
" this property, real and personal, which is not lo-
" cated in Indiana, and which is not in any way
" connected or used in the express business. Be-
" fore reading these affidavits I have here, I want
" to say there is one practical suggestion I wish
" to make, and I think in this possibly the Attor-
" ney General will join me. I have had several
" conferences with the Attorney General about
" the National and American pending cases, and if
" this Board thinks the law is as it thought last
" year, and intends to include this year the non-

" express property in the valuation, it would be
" a great accommodation to us, and I think it
" would be to the Attorney General, if that fact
" could be known not very far hence, because
" then another suit of course will have to be
" brought. Exactly the same question will be in-
" volved, but you cannot include the two taxes in
" one suit, and it will require the drafting of a
" new appeal and the Attorney General has
" assured us he will, so far as possible, accommo-
" date us, in the way of saving the labor of getting
" the papers in form, in presenting the question
" twice. If the Board abides by its opinion of
" the law, I now wish to read two affidavits that
" were filed in support of the appeal in the
" American Express case before Judge WOODS, and
" to say that we will leave copies of them with
" the Board. * * * These were made with
" reference to the appeal on the 1898 assessment.
" I want to say further that we are informed by
" the General Manager of the American Express
" Company, that these properties are still in their
" hands, just as they were then; that the condi-
" tions are substantially the same, except that
" some of them are slightly increased in value
" and that we offer now to make a further show-
" ing on that subject, if the Board shall have any
" doubt of that fact."

He then submitted the affidavit of James C. Fargo (Record, page 216) in the suit already then pending to restrain the 1898 assessment. This affidavit first stated the facts upon which the company claimed the right to include its ocean routes as part of its total mileage. It then showed (pp. 218, 219) that the tangible securities of the company held by it in the City of New York were held as mere investments, and that they were not used in the business of the company.

He further put in evidence the affidavit of Mr. Clark, made in the same suit, which corrected a clerical

error in the 1898 return, and had annexed to it a detailed tabulated statement showing the items going to make up the tangible investment securities of the company held in New York; also an affidavit of James F. Fargo, the assistant treasurer of the company, showing its investments and the fact that they were not used in the business of the company, and that they were situated outside of Indiana, and that they were not needed by the company as a basis of credit in its business (Record, pp. 225, 226). Then the following proceedings took place (Record, p. 227):

"MR. WRIGHT: That fourteen million and some odd dollars is the surplus?

"MR. BAKER: It is the accumulated profits; it is more than fourteen million; that much personal property and the real estate. I don't suppose there is any question about that. I did not read that part of the affidavit; the real estate that is used for rental purposes. In other words, a company with five million dollars of property has enough for the express business.

"MR. WINGATE: Is your personal property taxed in the cities where it is located?

"MR. BAKER: If the officers do their duty, just as you do, and I expect they do.

"CAPT. HART: You have not submitted any affidavit that this property is taxed in New York, have you?

"MR. BAKER: I don't think there is anything on that subject. It says it is there.

"I imagine that is not a proper subject of inquiry for the taxing officers in Indiana. * * *

"MR. TAYLOR, the Attorney General (page 231): Now, it becomes a question of fact, doesn't it Mr. Baker, whether or not this property you speak of, fifteen million dollars of personal property, bonds, stocks, notes, &c., and real estate, is in any way used in the express business?

"MR. BAKER: Of course it does, and you have

no affidavits before you, and no evidence that contradicts mine, and you will not have.

* * * * * *

"MR. TAYLOR: * * * The Supreme Court of the United States, in discussing this express question and every conceivable question that is presented here, except this one of mileage and the one that Mr. Baker suggests—and that is *that the personal property ought not to be charged to the company*—was taken up and passed on, and decided in a most elaborate opinion by the Supreme Court of the United States. The case went up from Ohio; the Indiana case went up with it, and a Kentucky case went up with the other two. The Ohio case was the first one filed, and it took the right of way. The Company claimed that they should only be taxed on their personal property in the State of Ohio, amounting to about $34,000, while the net earnings in that State were $300,000, and the opinion of the Supreme Court was a strong and vigorous one, and on the petition for a rehearing again the court rendered another very elaborate opinion, and they held that the assessing officers *have a right to assess these companies on a mileage basis. That has been the rule in the United States ever since. They are to be assessed the same as telegraph lines and railroads and Pullman cars; it is the same proposition.* But now the Supreme Court, in rendering the opinion, say they must presume that all of the personal property of the company goes to make up its assets, and is used in the business, presumably, and *they discuss precisely the question Mr. Baker here presents, and the Court says, presumably, all this property is used, and must be taken into consideration in the conduct of its business.* * * * In the original case they discussed the question, and in the minority opinion in the original case they also referred to it, and when it came up on the petition for a rehearing, they referred to it again, and

it was because of the way the court handles the question there, this question is again presented, because it was not squarely decided. * * * Now, as I say, they filed affidavits in the United States court, those that have been read here by Mr. Baker, *in which they raised the question that these fifteen or sixteen million of dollars of personal property, bonds and stocks, ought not to be assessed throughout the United States, because they are not used in the express business.*

"MR. BAKER: Ought not to be assessed in Indiana.

"MR. TAYLOR, the Attorney-General: It means all other States except New York, *because they say the stuff is there—ought not to be assessed in any State except New York, because the personal property is all in New York, and not used in the express business*" (page 232).

Thereupon the Attorney-General filed before the board the affidavit of Mr. Daily, the Auditor of State (Record, p. 233), which after certain statements relating to the company's right to include the ocean routes in its total mileage, stated, merely upon information and belief, and without disclosing in any respect the sources of his information, that if it were true that the American Express Company owned stocks and bonds and other tangible property, "all of said personal property was "he d and employed and used by complainant for the "purpose of transacting its express business, and that "such personal property and securities were necessarily "and properly employed in maintaining and continu-"ing said business" (p. 235); that the ownership of such property was necessary *in order to give the company "the credit necessary to enable it to get business"* and finally, that "so much of the American Express "Company's capital as is invested in securities of the "sort named, is *used and employed not only in and for "the City and State of New York*, but generally in the "management and conduct of the business of said co-

" partnership, and that such securities form a part of " its capital and a part of its business, and are in con- " stant use wherever said Company does business, " whether in the State of Indiana, or in the State of " New York, or elsewhere, and that if such securities " were held and retained absolutely in the City and " State of New York, and were not attainable for the " purpose of meeting liabilities and giving bonds in " other parts of the United States, and especially in " the State of Indiana, it would be difficult, if not im- " possible, for the American Express Company to " secure and successfully transact an expressage busi- " ness in the State of Indiana, and elsewhere than the " State of New York."

Then the assistant general manager of the company appeared before the board and was interrogated concerning the European business of the company and the method of its transaction, as bearing upon the right of the company to include its ocean routes in its total mileage. No questions were addressed to him on the subject of the tangible assets of the company situated outside of Indiana, except that an effort was made (on pages 243, 244) to show that it was necessary for the company to have large assets in order to give it the credit necessary to enable it to give bonds required to be given in the course of its business, but it appeared from the witness that no such bonds were required, except one to the Government for the transportation of bonded goods.

Proceedings for the years 1900 and 1901 are found at pages 254 and 382 of the record.

At no time did the board express any dissatisfaction or doubt concerning the statements rendered by the company, nor was any evidence received by the board in disproof thereof, with the single exception of the wholly ineffectual attempt to show that, because the possession of securities increased the company's credit, therefore, the securities, although situated outside of Indiana, might be said to be used in the business; but, so far as the

facts shown were concerned, the value of the company's property and its assets, and the value of its capital stock, no proof whatever was before the board other than what was contained in the statements rendered by the company (Record, p. 306).

Is it possible for any one to read these proceedings with any other result than the conviction that, upon the subject we are now discussing, the only question that arose between the company and the board was not one of valuation, but one of what property should be included in the assessment made.

By the returns made the board were apprised that the company was carefully and studiously endeavoring to raise the very question which is presented by this suit, namely, whether under the decisions which the Supreme Court had given, the board were at liberty to include in its assessment of the company's property in Indiana, any tangible property having a definite situs without that State, whether used in the business or not. This issue was distinctly raised by the company in its returns, in its written protest, in each year, and in the arguments of its counsel before the board. At this hearing the Attorney-General of Indiana, the official representative of the State and the official legal adviser of the Board of State Tax Commissioners, was present. He made no claim that the question before the board was one of the amount of valuation. He distinctly stated to the board what, according to his understandiug, had been established as matter of law by the decisions of the Supreme Court in the Ohio, Kentucky and Indiana cases. He instructed the board that it was their duty to assess the property *upon a mileage basis ;* and when the question had been again and again presented, as to whether the tangible assets situated outside of the State could be included in the value thus to be apportioned upon a mileage basis between Indiana and other States, he said to the board that it was "*because this*

"*question had not been squarely decided*" by the Supreme Court, although raised and referred to by it, that it was now again presented. And he called the board's attention to the fact that this Court had said, in the opinions referred to, that presumably all the property of a company was used in its business, which was equivalent to advising the board that, unless this presumption was overcome by proof, they were entitled and obliged to include it in their assessment, irrespective of its situs.

The Attorney-General and the State Board both knew, beyond any possibility of doubt, exactly what the question that the company was raising was. It had been raised in its returns and protests in writing in the most definite and precise form, and nothing can be plainer upon the face of the proceedings of the two years, 1898 and 1899, as shown in the record, than that it was assumed by all parties, by the Attorney-General, by the board and by the company, that the assessment of $450 per mile did, in fact, include the tangible assets of the company situated outside of Indiana, and they knew, moreover, that a suit had been brought, and other suits were to be brought, for the purpose of determining that precise question, and it was because, in the view of the Attorney-General, it had not been determined adversely to the State in the opinions already rendered by the Supreme Court, that he felt at liberty to advise the board, for we think the record cannot be read otherwise than as amounting to the giving of such advice, that they should include these extra-territorial tangible assets in their assessment.

It hardly comports with the frankness which we might justly expect from such a litigant as a representative of the sovereign State of Indiana that, in the face of such a record, evidently intended by all parties to be the basis of a test suit under which the validity of her acts in taxing the property of this company should be determined, she should now seek to avoid all determination of such question and resort to the somewhat shifty argument

that what is really presented by this record is not what the parties understood, nor what either of them understood or intended, but that, because we are not at liberty to inquire into the mental processes of the Taxing Board, therefore, we must be content to go without remedy, because, forsooth, their determination upon a question of mere value may not be reviewed.

2. Another method of showing that, as a matter of fact, the State Board did include this tangible foreign-held and foreign-situated property in the valuation made by it of the company's property in Indiana, and one of a most convincing character, is found in an examination of the actual results of the action of the board.

The reports made by the company for the years 1898, 1899, 1900 and 1901 set forth, as required by law, the value of the capital stock on the first day of April in each year. At the time of the making of these respective assessments no question was raised by the board concerning the correctness of the value placed upon the stock, and, as we have seen, the Indiana statute made this value a controlling test, and the only test, by which the board should arrive at the valuation of the entire property of the company.

With respect to the ratio of the mileage within the State to the total mileage of the company, there was a question between the company and the board as to whether the company was entitled to include its ocean routes in its total mileage. It was plain from the observations of the board upon the various hearings that it was not inclined to allow the ocean mileage to be included in the calculation.

The following computations are, therefore, submitted, made out in both ways: First, with the ocean mileage included, and secondly, with the ocean mileage excluded. In the first case, allotting to Indiana the proportion of the company's property in the ratio of

Indiana mileage to total mileage, including ocean routes, and in the second in the ratio of Indiana mileage to the total mileage of the company, exclusive of ocean routes. We have then these results:

1898.

Total mileage, less National Express lines		162,648 30
Indiana mileage		1,798 54
Proportion Indiana to total mileage		.011%
Capital stock $18,000,000 at 120		$21,600,000 00
Foreign real estate not used in business	$1,983,534 30	
Foreign real estate not used in business	3,076,438 00	
Foreign securities	15,501,344 33	
		20,561,316 63
		$1,038,683 37
Indiana's percentage on mileage basis, .011 per cent. is		11,425 51
Deduct assessed value Indian tangible property		16,015 00
Leaves		0

Excluding ocean routes, the mileage in Indiana would be .05144 per cent. of the total mileage, and the assessment per mile would still be 0.

1899.

Proportion Indiana to total mileage, .011 per cent.		
Capital stock, $18,000,000, at 140		$25,200,000 00
Foreign real estate not used in business	$2,026,747 88	
Foreign real estate not used in business	3,094,545 28	
Foreign securities	16,600,120 95	
		21,721,414 11
		$3,478,585 89

Indiana's proportion on mileage basis, .011 per cent., is	$38,264 44
Deduct assessed value Indiana tangible property	16,334 00
Total value assessable in Indiana	$21,930 44

equivalent per mile to $12.

Excluding ocean routes, the mileage in Indiana would be .05144 per cent. of the total mileage, and the assessment per mile would be $90.

1900.

Proportion Indiana to total mileage, .011 per cent.		
Capital stock, $18,000,000, at 140		$25,200,000 00
Foreign real estate not used in business	$2,026,747 88	
Foreign real estate not used in business	3,094,545 28	
Foreign securities	18,640,461 13	
		23,761,754 29
		$1,438,245.71
Indiana's proportion on mileage basis, .011 per cent., is		$15,820 70
Deduct assessed value Indiana tangible property		15,724 00
Total value assessable in Indiana		$96 70

equivalent per mile to 0.

Excluding ocean routes, the milage in Indiana would be .0523 per cent of the total mileage, and the assessment per mile would be $32.

1901.

Proportion Indiana to total mileage, .011 per cent.		
Capital stock, $18,000,000, at 150		$27,000,000 00
Foreign real estate not used in business	$2,026,747 88	
Foreign real estate not used in business	3,081,672 06	
Foreign securities	19,259,933 53	
		24,368,535 47
		$2,631,646 53
Indiana's proportion on mileage basis, .011 per cent., is		$28,948 11
Deduct assessed value Indiana tangible property		17,455 00
Total value assessable in Indiana		$11,493 11

equivalent per mile to $6.

Excluding ocean routes, the mileage in Indiana would be .0528 per cent. of the total mileage, and the assessment per mile would be $65.

3. The foregoing computations do not include in the tangible property of the company any of its equipment, consisting of horses, wagons, safes, supplies and the like.

But if we correctly interpret the opinion of this Court rendered upon the motion for re-argument in the former cases, such a system of legislation as that of Indiana, as applied to express companies, can, having regard to the nature of their business, operate only upon the *intangible* property of the company, for that is the only property which has not a definite situs. In this respect the case differs from those arising upon similar statutes designed to operate upon railroad or

telegraph property, where the thing valued is a single physical unit.

In the case of a railroad, it is impossible to say what value is given to the whole by any part, or what value is given to any part by its inclusion within the whole, because the entire thing is by the hypothesis a unit, and therefore indivisible, although situated partly in one State and partly in another. Therefore, the assessment of the portion lying within any one State upon the basis of the value of the whole is not an importation of values of property lying without the State, even though the portion lying without the State might be somewhat more valuable than that within, considered each as an independent line.

But in the case of an express company, there is no such physical unity, for there is no structure or physical thing lying partly within one State and partly within another, and still constituting a physical unit. The business of the express company consists essentially in the rendering of services, and the business is conducted chiefly through the employment of a vast number of employees. There are certain physical things used in connection with the business, but it is not these physical things which produce the earnings or the profits. They are produced by the services of this vast number of employees.

Still the Court held in the former cases that the physical things, such as horses, wagons, safes, etc., wherever situated, were devoted to a common use, and that there was, therefore, in respect to them a unity of use.

None the less are they tangible property having a definite physical situs, and subject to taxation as tangible property wherever that situs is.

The fact that they are in use in the business does not import them into Indiana or alter, in any degree, the situs which, by the general rules of law, is imputable to them.

Now, it so happens that a very small proportion of this tangible, physical property is situated in Indiana.

The whole amount of it owned by the express company is over one million and a half of dollars in value, of which less than eight thousand is situated in Indiana. Now, if our interpretation of the opinion of this Court is correct, and such a law as that now under consideration can operate only upon intangible property, or good-will, or earning power, and the State has chosen to establish as the standard of the value of the entire property the market value of the capital stock, this tangible property should be added to the other tangible ble property of the company, in order to ascertain whether, when this is done, there remains any excess of value, represented by the capital stock, over and above the aggregate value of the tangible property of the company having a definite situs.

The following tables, for each of the years in question, differ, therefore, from those given above, in that they include in the tangible property of the company the value of these articles of equipment.

Although the State Board did not, either at the time of receiving any return made by the company, or at the time of any hearing before it, question in any way the truthfulness and accuracy of the reports submitted by the company, and particularly in reference to the value of its capital stock, the answer interposed to one of the supplemental bills, although made long after the making of these assessments by the board, contains an allegation as to what the market value of the capital stock of the American Express Company was on the various days as of which the returns were made for the four years in question (page 122). It is alleged that in April, 1898, when the return of the company set forth the value of the capital stock as $120 per share, the market value was $125; that on April 1, 1899, when the company returned $140, the market value was $140; that in 1900 when it returned $140 it was from $149 to $151; that in 1901, when it returned $150 it was $200. This claim that the market value of the stock was otherwise than reported by the company, was

not made till long after, in some cases years after, the assessments in question were imposed. It is fair to say that it appears by the record that there were transactions in the stock at or about the times alleged, at prices corresponding to those now alleged by the appellee (Record, page 394); but it does not follow that these prices constituted or represented in any fair degree the market value of the stock. They were prices for small transactions of fractional lots of less than one hundred shares, and the stock itself, being what is known as an inactive stock, generally held for investment, with a very small amount floating in the market, such transactions are in fact no fair criterion of the market value of the whole of the capital stock of the company. The placing of one thousand shares of this stock upon the market would enormously depress its price.

But, because these allegations are made, the tables which we have now to present are made up not only upon the basis of the prices for the stock returned by the company in its returns for the several years in question, but also upon the basis of the market price for the stock at the several dates mentioned, according to the allegations in the answer of the Auditor of State. The tables are as follows:

Intangible Property.

1898

Capital $18,000,000. at 120=.....$21,600,000. or at 125=$22,500,000.				
Real estate not used, market.....	$1,983,534 30			
Real estate used market	3,076,538 00			
Securities.....	15,501,344 83			
Plant...	1,505,788.72			
Less that in Indiana	8,000 00	1,497,738 72	22,059,055.35	22,059,055 35
			0	$440,944 65
Indiana Assessment 1798.34 miles at $450=.				$809,253.00
Indiana proportion total mileage.....				.011%
" " Railroad mileage.....				.05144%

1899

Capital $18,000,000 at 140=.....			$25,200,000 00
Real estate not used, market.....		$2,026,747 88	
" " used...		3,094,545 28	
Securities.....		16,600,120 95	
Plant.....	1,534,591 20		
Less that in Indiana...	8,000 00	1,526,591 20	23,248,005 31
Total Intangible.....			$1,951,994 69
Indiana Assessment 1,798.34 at $450=.....			809,253 00
equals 41%			
Indiana proportion total mileage.....			.011%
" " Railroad mileage.....			.05144%

1900

Capital $18,000,000 at 140 = 25,200,000.00 or at 150 = $27,000,000 00			
Real estate not used...	2,026,747 88		
" " used	3,094,545 28		
Securities.....	18,640,461 13		
Plant less that in Indiana.....	1,589,294 20		
		25,351,048 49	25,351,048 49
Total Tangible..... ..		0	1,648,951 51
Indiana Assessment 1,830.35 miles at $450.			823,657 50
exceeds 50 per cent.			
Indiana proportion total mileage		.011%	
" " Railroad "		.0523%	

1901

Capital $18,000,000. at 150 = $27,000,000 or at 200 = $36,000,000 00			
Real estate not used...	$2,026,747 88		
Real estate used.....	3,081,672 06		
Securities.....	19,259,933 53		
Plant less that in Indiana.	1,651,321 74		
		26,019,675 21	26,019,675 21
		$980,324 79	$9,980,324 79

Indiana Assessment 1,848.45 at $450. = $831,802.50 or 84% of the first and about 10% of the latter.

Indiana proportion total mileage .011%
" " Railroad " .0528%

4. From the foregoing it will be perceived that it was an absolute impossibility for the State Board of Tax Commissioners to arrive at the value which they imputed to the company's property in the State of Indiana, without assessing and including in such valuation tangible property situated without the State. In 1898 and 1900 the enormous assessment of over $800,000 was *upon intangible property which had no existence whatever.* In 1899 the Indiana per centage of mileage being either about one per cent. or about five per cent., according as to whether the ocean mileage is included or not, *the assessment represented 41 per cent. of the total value of the intangible property, and in 1901 it represented 84 per cent. of it.*

It should not be forgotten that there was no question raised at the time concerning the accuracy of any of the figures, so that the factors which must enter into the calculation are established, and not the subject of doubt.

The valuation of the intangible property of the company, which, upon admitted factors, is shown to be impossible to be arrived at without the inclusion of property which is beyond the State, is no longer a valuation of property within the State, and the

question which an attack upon it presents is no longer a question of excessive valuation of property within the State.

5. The appellee must be driven to the choice of an alternative. It having been shown that, upon admitted factors which must enter into the calculation, the result could not be arrived at without the inclusion of property situated outside the State, it is manifest that either the assessment did include such outside property, or that it was the assessment of a purely arbitrary amount without regard to value.

6. The Court should not fail to observe the arbitrary action of this Board throughout the series of years in question.

The value of the Express Company's stock changed from time to time. Upon the company's own showing it rose from 120 in 1898 to 150 in 1901, an increase of 25 per cent. According to the figures stated in the answer, it rose from 125 in 1898 to 200 in 1901, an increase of 60 per cent.

So, too, the assets of the company changed from time to time. Its tangible assets increased, and, through the rise in value of its capital stock, its intangible property also increased. The proportion of mileage in Indiana to the total railroad mileage of the company also changed from time to time, although slightly.

None of these changed conditions resulted in any corresponding change in the amount of the assessment made by this Board. Rigidly and persistently each year the same assessment of $450 per mile was made, and this in the face of the most complete and frank exposure of its affairs by the Company.

Fourth Point.

We submit, with a great deal of earnestness, that there is no escape from the demonstration that what *the State Board actually did, throughout this* series of years, was either to include in the assessment of property within the State that which was tangible and had an actual situs without the State, or to make an arbitrary assessment of over $800,000 each year, without any foundation or basis in fact, without any justification in law, and purely as the result of their own whim and caprice.

If what they did was the former, then the assessment is void for reasons which we have already presented.

If what they did was in fact the latter, then their action is void as being in violation both of the Commerce Clause and of the Fourteenth Amendment. It is a violation of the Commerce Clause because the business of the express company is largely interstate business, and an arbitrary tax upon the company not laid upon its property or its franchise, or based upon either, must be an illegal burden upon interstate commerce. It is a violation of the Fourteenth Amendment because, under the guise of a tax upon property, what the State has actually done is to impose an arbitrary and capricious tax for which there is no pretense of any basis or justification in the law.

The history of these proceedings by the Indiana State Board furnishes an instructive commentary upon what was said in an earlier part of this brief.

In discussing the terms of the statute of Indiana under which this assessment is sought to be justified, we said that in express words it laid down a rigid and inflexible mathematical process to be adopted by the board, and we observed that it was not a sufficient answer to say that by a strained construction, such as that adopted in the case of Western Union Telegraph Company vs. Taggart, 141 Indiana, the Supreme Court of

that State had construed the statute as laying down no such inflexible rule, but as conferring upon the taxing authorities the necessary discretion to make such deductions as were requisite in order to save the statute from constitutional condemnation. The *Supreme* Court of Indiana said that it would be the duty of the assessors to "*consider*" such exceptional circumstances as might be presented to them. How have they "considered" them in this case? Is it not manifest that they have regarded themselves as bound, not by the construction of the statute laid down by their Supreme Court, but by its express terms? How can it be claimed that they have discharged this duty of "consideration?" "Consideration," without result and without effect, furnishes little protection to the citizen whose rights are invaded.

Observe how the process has worked. In each of these years there was an assessment of more than $800,000. Granting the contention of the appellee that the ocean mileage should be excluded from computation, Indiana's proportion of the total railroad mileage of the company would be a little more than 5 per cent. If every State in which the company did business taxed the intangible property upon the same basis, the total assessment upon that score would be $16,000,000; but this would represent the intangible property alone, and every State in which the tangible property was situated would have an undoubted right to tax the latter also. Now, during the period in question, the tangible property of the company was of the market value of from $22,000,000 to $26,000,000, and, assuming that none of it was represented by tax exempt securities, we must add an assessment of from $22,000,000 to $26,000,000, *making a total assessment upon the property of this company of from $38,000,000 to $42,000,000 when the entire value of all its property, tangible and intangible, as evidenced by the market price of its whole capital stock, was from $21,600,000 to $27,000,000.*

For example, take the year 1898. Upon the Indiana basis the total assessments upon which this company

would be called upon to pay taxes would be $38,000,000, while the entire value of its capital stock did not exceed $21,600,000, or, taking the most extreme figures claimed by the appellee, $22,500,000, *a valuation for the purposes of assessment of not less than $15,500,000 in excess of the company's entire property.*

And yet, our learned opponents say that we are without remedy, and that these extraordinary results, unjust as they may be, must stand, because the statute is constitutional and the question presented is simply one of an excessive valuation of our property within the State of Indiana! Of what value are constitutional guaranties and privileges under a system where such results are possible? When a State passes an act the adminstration of which leads to such outrageous injustice, are we to be without remedy simply because the Supreme Court of that State has so construed its statute as to induce the Federal Court, following that construction, to say that the law itself does not violate the Constitution? If we are not entitled to a remedy in such a case, then surely our constitutional guaranties are of little avail against the arbitrary action of State authority.

Fifth Point.

The learned Judge in the Circuit Court held that no fraud was proved on the part of the State Board, and that its determination, either as to the value of the company's property or the company's right to include its ocean mileage, could not be impeached except for fraud.

1. We think that we have already shown that what the board did was to *act without jurisdiction.* If that be true, then it is immaterial whether its action was fraudulent or not, for it cannot stand. That this is the

law in Indiana is shown by a recent decision of its highest court.

Hart vs. Smith, 159 Ind., 182.

This case involved the validity of an assessment made by the State Board of Tax Commissioners against the property of a copartnership engaged in publishing a newspaper.

The assessment was based in part upon the good-will of the business. The action brought was in the same form in which the present suit is framed, being a suit to restrain the Auditor of State from certifying the assessment to the County Auditor. The Supreme Court of Indiana held that, in the case of a newspaper, the legislation of that State did not authorize the State Board to assess, as part of its property, the good-will of a partnership conducting such newspaper. There, as here, the objection was made that the suit was a collateral attack on the action of the Board, and that its determination was final and could not be impeached except for fraud. The Supreme Court of Indiana said (page 196):

> " * * * such tribunal is nevertheless one of " granted powers; and, if it acts without jurisdic- " tion, the courts have power to arrest the con- " sequences of its acts. In State Board, etc., v. " Holliday, 150 Ind., 216; 42 L. R. A., 826, this " court sustained a proceeding to enjoin the state " board from listing and valuing the life in- " surance policies for taxation that were held by " the appellees in said action. In Senour v. " Ruth, 140 Ind., 318, 321, this court, in answer " to the claim that the appellee therein " was precluded by the action of the " county board of review, said: ' When we " ' have found that the property was not " ' within the jurisdiction of the State, we have " ' found the absence of an element necessary " ' to the validity of the board's action, and, in " ' such case, the action is void, and may be at-

" ' tacked collaterally.' The proposition that " courts may relieve from assessments laid with- " out jurisdiction finds support in the authorities " without this State " (citing numerous author- ities). " In Central Pac. R. Co. v. California, " *supra*, the Supreme Court of the United States " said: ' Undoubtedly if the board of equalization " ' had included what it had no authority to as- " ' sess, the company might seek the remedies " ' given under the law to correct the assessment, " ' so far as such property was concerned, or re- " ' cover back the tax thereon, or if those remedies " ' were held not exclusive, might defend against " ' the attempt to enforce it.' Judge COOLEY " recognizes that the courts may relieve from an " assessment when some principle of law is vio- " lated in making it, and when the complaint is " not merely of an error in judgment (COOLEY, " Taxation, 748, 777, and notes on pp. 750, 776).

" We think that in a case of this kind it is not " proper to apply the rule that obtains when a " judgment of a court of general jurisdiction is " collaterally attacked—that the infirmity must " appear on the face of the record. These pro- " ceedings are summary, and, to a large extent, in- " formal, and there are no pleadings that tend to " make the question decided certain. It is proper " in a case like this, where values have not been " extended on the specific items of the taxpayer's " schedule, to show affirmatively that he was " assessed with an item that was not taxable " under the laws of the State. * * *

" It is our conclusion, as it is alleged that the " good-will of appellees' business was assessed, " and as there is no means of determining the " amount of that portion of the increase that the " state board of tax commissioners had authority " to add, that the action of said board as an en- " tirety, in so far as it added to appellees' assess- " ment, was properly held to be invalid."

2. If, however, it were necessary to prove fraud, in fact, we submit that this record is amply sufficient upon which to found such a finding.

The fraud necessary to impeach the determination of such a board is not necessarily that species of fraud involving moral turpitude. It is legal fraud. Thus, if the statute commanded the board to make certain deductions, and it refused to make them, this would be such misconduct on its part as to be equivalent to fraud, and would have the same effect in invalidating their proceedings and laying them open to inquiry. So, if, instead of proceeding according to the statute, they arbitrarily assessed upon this interstate carrier a fixed sum, without any authority of law whatever, must we place the name of fraud upon such conduct in order to make it of a character to invalidate the proceedings of the board and render their conclusion open to inquiry and review by the courts? So, too, if the conclusion reached by the board shows a result enormously in excess of that warranted by any of the factors which they were at liberty to use in their calculations, that circumstance would be proof of such misconduct on the part of the board as to deprive their action of any weight whatever. This precise question was decided by the Supreme Court of Minnesota.

State vs. London and N. A. Mortgage Company, 80 Minn., 277, 284.

In this case the defendant was assessed in the sum of a million dollars. It appeared before the board and denied that it had any property subject to taxation. By the evidence taken in the suit it appeared that the true value of the property in St. Paul, which the assessor had estimated at one million dollars, was but sixty-two thousand dollars. The face value of certain credits was three hundred and one thousand dollars, but it appeared that they were, in large part, not collectible. The Court below reduced the assessor's valuation from one million to the face value of the credits, but declined to make a further reduction, upon

the theory that it was the duty of the assessor, rather than of a court, to estimate valuations. The Supreme Court of Minnesota said:

"We concur in the view that a reduction should "have been made, but the reduction was not sufficient, and we are not satisfied with the reasoning of the court in this respect. If articles of "personal property are assessed, and their valuations fixed by the assessor within the range of "reason and justice, such estimated values would "be entitled to great respect; but the theory of "the trial court that, even if the assessor had assessed an article of personal property at what "is apparently ten times its actual value, it cannot be reduced by the court, is unsound. *We "have no doubt that such excessive valuation, in "violation of reason, justice, and common sense, "would convict the assessment of such lack of "the element of judgment as to require interference by the judicial power to correct "it.* As to notes and bills receivable, the reason "for judicial interference is still stronger. "Seventy-three thousand dollars, in round numbers, is a large sum. The Court below found "that bills receivable to this amount in one instance were wholly worthless; of no more value "in fact than counterfeit money, or obligations "upon which the statute of limitations had run, "To say that because the assessor returns that "sum, and the board passes such worthless stuff "at its face value, the Courts cannot correct the "palpable injustice, shocks every sentiment of "fair play, and leads to the inquiry whether a "Court can act at all in the premises to prevent "the most arbitrary acts of confiscation. "Whether we treat the constitutional declaration "in section 3, article 9, that laws shall be passed "'taxing * * * property according to its "true value,' as requiring legislation to effectuate

" it or not, it is clear that under this provision in
" our fundamental law—which is essential to jus-
" tice and good government—any interpretation
" of our taxing statutes requiring an arbitrary as-
" sessment of property largely in excess of its
" known and admitted value to pass judicial in-
" quiry would be a palpable violation of its true
" purposes and cannot be tolerated upon
" any principle of justice or equity. * * *
" It is to be presumed, of course, that the as-
" sessor as well as the board of equalization will act
" fairly, and where, within the reasonable range of
" inquiry, there is latitude for a difference of esti-
" mations as to values, the court in such cases
" will not interfere with their conclusions; but
" when, as in this case, an assessment has been
" for an exorbitant amount, and it is apparent
" that no judgment at all has been exercised, it
" must be evident that either a demonstrable mis-
" take of fact has occurred or a gross injustice
" has been intentionally perpetrated; and we hold
" in every such case the power of the court is suf-
" ficient to correct the wrong, and that it should
" not hesitate to do so."

Sixth Point.

It is disclosed by the proceedings of the Board, as well as by the answers of the defendant to the bill and and supplemental bills, that a principal reason why the Board included the tangible property of the Company without the State was because it was, as they thought, used in the business of the Company. By this they evidently mean that the possession of these properties by the Company gave it an established credit, which enabled it more successfully to prosecute its business,

for there was not a scintilla of evidence to show that it was in any other sense used in the business. The proof on this point was overwhelming and conclusive.

1. For reasons which we have already stated, it is quite immaterial whether these properties or any of them, were used in the business of the company, or not. To whatever extent they might be used in the business, such use could not alter their physical situs as things. Bonds, stocks, securities, to say nothing of real estate and chattels, are tangible property, capable of having, and thoroughly well recognized in the law and by decisions of this Court as having an actual situs where they exist.

New Orleans vs. Stempel, 175 U. S., 309.
Blackstone vs. Miller, 188 U. S., 189.

2. But while we regard the point as to whether these properties were or were not used in the business as immaterial, we submit that, upon the evidence before the Board, it was bound to find, and upon the evidence presented to the Court below *it* was bound to find, that a large amount of the real estate of the company, and all its stocks, bonds and securities situated in the City of New York, were properties which were not, in any sense, used in the business.

These properties had been acquired by the company through the accumulations of many years. From time to time it had invested such of its earnings as were not distributed in dividends to stockholders, in bonds, stocks and other securities, and in real estate, all of which were held in precisely the same way as similar investments are held by individuals. True, they are at the risk of the business in the sense that they belong to the company, and that all its property is liable for its engagements; but in this sense they are no more employed in the business than are the private investments of a merchant a part of the capital which he has embarked in business. They have no relation to the express business. Their

possession, it is true, may give a standing and responsibility to the company which it would not otherwise have, but it is precisely such a standing and responsibility that enables it to acquire business and results in the creation of the intangible property which, as this Court says, such statutes may fairly reach.

The returns of the company and the evidence laid before the board in the affidavits of the officers of the Company (Record, pp. 216, 220 and 225) show that these properties were not used in the business and sustained no relation to the business whatever. The testimony of Mr. Flagg (Record, pp. 169–193) and of Mr. Ledyard (pp. 317–327), taken in the court below, to the same effect, was uncontradicted.

3. Another circumstance which seemed to play no little part in inducing the State Board to include this extra-territorial tangible property, as evidenced by allegations of the answers in this case (Record, p. 67), and some of the questions put by the Board at the hearing, instances of which are found at page 227, was that these properties were not returned to the City or State of New York for taxation, and that the company was not assessed for personal property in the City of New York.

No such considerations could justly be allowed to have any weight whatever in determining the assessment to be made upon the company's property in Indiana. The duty of the Board was confined to assessing the property within the State, and the moment that any given property was found to be of a tangible character and situated without the State, then, so far as that property was concerned, it was an end of the matter. It was not open to the board to inquire whether such properties were or were not actually taxed in the States in which they were situated, because, whatever the answer to such inquiry might be, it could not be considered by the board in performing the duty which was before it.

Nevertheless, as the members of the State Board, in

the proceedings before it, and the learned counsel for the defendant, in drawing the answer to the bills of complaint and in the taking of the testimony, seem to have attached much importance to this point, it is well that the Court should understand what the fact about it is. Of course, the attempt is to show an evasion of just taxation by the American Express Company, but the attempt is founded upon an utter ignorance of the system of taxation and the law of taxation in the State of New York.

(*a*) It is perfectly true, as alleged in the answer (Record, page 57) that no returns of personal property were made to the State, County or City of New York by the American Express Company.

The reason is that the system of requiring taxpayers to make returns to assessing officers does not exist in the State of New York.

(*b*) It is also true, as alleged in the answer (Record, page 57) that neither the name of the American Express Company nor that of its president appears upon the tax rolls of New York City as assessed for personal property.

The reason is that, under the law of the State of New York, whatever personal property subject to taxation the American Express Company has, is taxed not against the company, as is the case with corporations, but against its shareholders, because the company is a partnership, and its shareholders are partners, and, as in the case of members of other partnerships, the partnership property is assessed to the several members of the firm.

See *People on relation of Winchester vs. Coleman*, 133 N. Y., 279,

where it was held that, for the purposes of taxation, an organization like the American Express Company is to be dealt with as a partnership.

(*c*) It is, therefore, wholly untrue, "that no taxes "were assessed or paid in the City of New York upon

" the specific personal property described in the bill, " or that the refusal of the company to pay the pro- " portion of the taxes alleged to be due on its prop- " erty " in Indiana was an attempt to evade the payment of any taxes justly due (Record, page 57).

(d) The defendant further alleged in its answer that the Express Company returned to the Comptroller of the State of New York its capital employed in New York State as $2,916,000 for the year 1898 (Record, page 57), doubtless for the purpose of suggesting that such a return amounted to a concealment of the very large amount of tangible assets, exceeding $15,000,000 in value, which the company now claims to have had in the State of New York in that year, and a copy of this report to the State Comptroller of New York is given in evidence at page 397 of the Record.

Here also the defendant has been led into an absurd error through ignorance of the system and law of taxation in force in the State of New York. The law under which the return in question was made was a law imposing a *franchise tax* upon the company.

Under this law the actual assets or property of a company are not considered. In every case where a company makes dividends, as the American Express Company did, of six or more than six per cent. per annum, the tax is calculated upon the *nominal or par value* of the capital, irrespective of its assets, and at a rate depending wholly upon the rate of dividend declared; in other words, it is not a *property* tax. (See Section 182 N. Y. Tax Law.)

(*e*) Moreover, a large part of the securities owned by the American Express Company are exempt from taxation under the law of the State of New York, which exempts from taxation in the hands of the shareholders the stocks of all corporations which pay their own taxes. (See Section 4, subd. 16, N. Y. Tax Law.)

It is worthy of remark, therefore, that the taxation of this tangible property by the State of Indiana not

only subjects to taxation tangible property situated without the State, but tangible property which, by the law of its situs, which is also the domicile of the co-partnership, is wholly exempt from any taxation.

Seventh Point.

The Court below erred in holding that the question of including the ocean routes of the company in its total mileage for the purposes of the calculation of the Indiana tax, was a question for the exclusive determination of the State Board which could not be impeached except for fraud; and it erred in not holding that, upon the evidence, these ocean routes ought to have been included in the total mileage.

1. The language of the Indiana statute would seem to be plain and to admit of no ambiguity. It requires the company to return to the Auditor of State:

(*a*) "The total length of the lines or routes over "which such Company * * * transports such "merchandise, freight or express matter.

(*b*) "The total length of such lines or routes as are "outside of the State of Indiana."

Horner's Annotated Statutes, Sec. 6521*m*.

In the method which the board is directed to follow in assessing the property, it is provided that

> "said Board * * * shall next ascertain and "assess the true cash value of the property of such "Company * * * within the State of Indiana, "by taking the proportion of the whole aggregate "value of said Company * * * as above as-"certained, after deducting the assessed value of "such real estate without the State, * * *

> " *which the length of lines or routes within the State*
> " *of Indiana bears to the whole length of the lines*
> " *or routes of such Company* * * * and such
> " amount so ascertained shall be deemed and held
> " as the entire value of the property of said Com-
> " pany * * * within the State of Indiana "
> (*ib.*, Sec. 6521*q*).

The rule thus laid down as one for apportioning a part of the intangible property to Indiana, is one which the State has itself chosen to adopt.

That it should result in the apportionment of a smaller part than that which was hoped for or expected by those who framed the legislation, is surely no reason for a perversion or misconstruction of the language used in adopting it.

It is evident, from the pleadings and the remarks of members of the State Board and of the Attorney-General, their official adviser, that they chose to assume, in direct contradiction of all the evidence laid before them, that the inclusion by the company in its returns of these ocean routes in the total mileage was resorted to as a device to escape taxation.

We submit that there is nothing in the evidence before the State Board which could justify any such assumption, and that their finding in rejecting this ocean mileage is so palpably in the teeth of the evidence produced before them, and is shown by the evidence in the case to be so wholly without foundation in fact, that their determination in respect to it is entitled to no weight whatever.

There was but one fact which the Board, as shown by its questions and remarks, relied upon for this assumption, and that was that, for a number of years prior to 1898, the company had returned thirty-five or forty thousand miles as its total mileage, and that in the year 1898, for the first time, by including its ocean routes, it was enabled to show a mileage of more than one hundred and sixty thousand miles, thereby reducing the proportion of the State of Indiana from about

five per cent. to one per cent. of the total mileage of the company.

But there was a reason, and a very good reason, for this change, which is completely and frankly explained by Mr. Flagg in his evidence, and which was explained by the officers of the company at the hearings before the State Board.

The American Express Company, prior to 1898, conducted its express business between the United States and foreign countries in the same way in which the business was conducted by the other principal express companies of the country. That is, when foreign business was brought to it, instead of handling it itself, the company handed it over to a local European express company in New York or Boston, and forwarded it to Europe by such company, and there the matter ended, so far as the American Express Company was concerned.

In 1897, however, the company determined to go into the European business on its own account. It organized a service in Europe, and established offices in London, Liverpool, Paris, Southampton and other principal points in Europe. It made arrangements with steamship lines for the transmission of its express matter over regularly established steamship routes (Record, p. 164). It acquired and maintained in Europe its own equipment of horses, wagons, safes, harnesses, office supplies, etc., corresponding in every respect to similar equipment of the company in this country (Record, pp. 161-165). It issued its through receipt to the shipper and took goods and forwarded them upon its own responsibility (Record, p. 165). The European service was organized upon exactly the same plan and system as that existing in this country. The company's foreign offices are conducted precisely as its offices in New York, Chicago, Boston or Detroit are conducted (Record, page 165). It made contracts and arrangements with the steamship lines under which it received special rates and facilities and specific space in the steamships for the accommodation of

its business (p. 190), the goods being placed in a separate portion of the ship, distinct from the general cargo, being the last goods put on board, so that they are the first goods to be taken out. It pays a special compensation to various employees of the steamship companies for services in connection with the goods forwarded by it (p. 190). On the arrival of goods at the port of destination they are taken out, or received, at the piers by the company's own employees or accredited agents (p. 190). The goods are in direct charge of the purser of the steamship during the transit (189). The earnings from this department of the business, which is called the European Department, are received and passed into the hands of the treasurer, the same as any other earnings from any other branch of the express business transacted in this country (p. 169), and there is no difference in the way in which the business is carried on over these steamship routes and the way in which the business is carried on upon many lake, river and coast lines in this country. In the case of these water routes, the Company does not send a special messenger accompanying the goods as they are in charge of the purser (p. 188), and the same is true of the ocean routes (p. 189), and the same is also true as to a large portion of the transportation by rail in this country (p. 166), where the express matter is guarded *en route* by the baggage master, an employee of the railroad company, who receives special compensation for such services from the Express Company (p. 166).

A schedule of these ocean routes over separate steamship lines with which the Company has thus made contracts, is given at page 187 of the Record.

The Company employs in Europe in its express service, one hundred and twenty-two persons whose services are exclusively devoted to that business, and in addition, it has more than four hundred European agents in foreign countries, who render services to the

Company for compensation paid by the Company (Record, p. 395).

Proofs of a similar character were laid before the State Board (Record, pp. 237, 238, 242, 245).

It is true that the Adams Express Company and the other principal express companies did not include in their returns to the Indiana State Board any ocean routes as part of their total mileage, and that the American Express Company was the only one that did this.

But this was for the reason that it was the only one which had gone into the European business on its own account. This was also fully proved, not only before the State Board (Record, page 242) where Mr. Fargo testified:

> "In other words, at the present time there is "essentially no difference in the transaction of "the business we do over there and the transac- "tion of business here. The operating is done "the same, and we are the only company that do "business in that way in Europe. Of the others "I think about 10 or 12 years ago, the Adams "Express Company experimented, but only in a "small way, and gave it up. They don't think "there is anything in it. We do, and we are "now the agents for the New York Central sys- "tem of railroads. They have freight agents also "in Europe. So that without a thoroughly or- "ganized express system, as we have it here, we "would not be able to conduct at all the business "we are to-day doing in Europe."

but also in the suit, for Mr. Flagg testified:

> "Q. Please state whether or not the foreign "express business, I mean between the United "States and European countries and other foreign "countries, is carried on by any other of the "great express companies of the United States on

" the lines which you have just stated the American " Express Company is using in the transaction of " that business? A. No, it is not. The other " express companies, such as the Adams, the " United States and the Wells Fargo, forward " their business to an agency, whoever he might " be,—some English or French or German firm, " who receives their business for them and dis- " tributes it. They have nothing further to do " than put it on board the ship consigned to their " European agent and that is where their responsi- " bility ceases. I perhaps should qualify that by " saying that I believe the Wells Fargo Com- " pany have maintained at London for a good " many years something in the nature of an agency " which is more or less a part of their business ; " but with that I am not familiar in detail, but " their methods are as I said the same as the " Adams and the United States ; the business is " passed along to the agent who receives it on the " other side of the water" (Record, p. 166).

He further testified that on arrival at destination the goods are treated in the same way whether the destination happens to be Chicago or whether the destination happens to be Liverpool or Paris (p. 167).

It is manifest from these proofs, which were entirely uncontradicted, both before the State Board and in the evidence taken in the Court below, that the European business of the American Express Company was just as much a part of its general express business as that which it conducted on any railroad in the State of Indiana.

It was also evident that it had gone into this business in good faith and with a view to the profit which it might make in it.

Probably not the least inducement to the company's going into the foreign business in the way in which it did, was the circumstance that it would thereby acquire a world-wide reputation ; that its name would be

known not only here, but in Europe and other foreign countries, and it would be enabled to offer, as it does offer to the public, to accept and transmit express matter to any part of the civilized world.

Nothing, by the way, could more directly or efficiently tend to the creation of just such intangible property or value as the State of Indiana seeks to tax under the legislation which we are considering, than the reputation and credit to be gained by the company through so vast an extension of its business and of the territory through which it is known. It is by the exercise of just such intelligent enterprise that the company has attained its present credit and reputation.

The State Board seems to have thought that the establishment of this foreign business in 1897 and 1898 was for the purpose of escaping the operation or reducing the extent of the application of such tax laws as that of Indiana, imposing a tax upon the intangible property of the company in proportion to mileage. That this was not its object is conclusively shown by the circumstance that at the time in question this extension of its routes could have had no such effect. The tangible assets of the company situated outside of the State of Indiana exceeded the total market value of all of its capital stock, and it was, therefore, a matter of perfect indifference to the company whether the Indiana mileage was 1 per cent. or 5 per cent. of the company's mileage, for on either basis there would be nothing whatever upon which to impose any tax.

It is true that by the year 1901 the market price of the company's stock had increased so as to create a surplus of value over and above the market value of its tangible assets. This very extension of its lines to Europe, this exhibition of business enterprise, which, of course, was widely advertised, might have been a large factor in the increase of the market value of the company's stock, which produced the very intangible property which alone Indiana had a right to tax under this statute.

It may have appeared to the Court singular that a company doing such a business as the American Express Company, should have commanded in the year 1898, a market price for its stock in excess of the market value of its tangible assets, but the American Express Company is not a corporation, but a mere partnership. It is not obliged to file, and does not file, any returns of its property, and it makes no formal reports to its stockholders. Consequently, while the company has been known to be prosperous, there has been no exact public knowledge of its actual condition. Doubtless the public would have been surprised to know that the company's actual property was as large as it was. That the market price of its stock increased so greatly between 1898 and 1901, is, not improbably, due, not only to the great extension of the company's business and operations by the establishment of its European Department in 1897, but to the fact that it has made to the State of Indiana the very disclosures contained in the reports shown in this record, which, of course, have been exposed in this litigation, and that thereby the public have obtained a knowledge which it did not before have concerning the actual financial condition of the company.

Eighth Point.

Certain objections were made in the Court below on the ground of jurisdiction.

1. It was said, that while it is true that the complainant Fargo is a citizen of New York, and the defendant a citizen of Indiana, nevertheless, the suit was really brought on behalf of the American Express Company, and should be considered as a suit by that

company, and that it appeared by the record that there were a few shareholders of the company who were citizens of Indiana, which would be sufficient, it was claimed, to defeat the jurisdiction (p. 305). It was alleged in the bill, and stipulated in the record, that the complainant Fargo was a resident citizen of New York and a shareholder in the company, and also its president. It was proved that at the time the suit was brought there were between three and four thousand shareholders (Record, pp. 147, 148), holding one hundred and eighty thousand shares, of whom twenty-one were residents of Indiana, holding three hundred and sixty-three shares (Record, p. 190).

The American Express Company is not a corporation, but merely the creature of private contract. It derives its authority to exist and its powers from no statute, but simply through a contract between its members. It is admitted in the answer that it is a partnership. The answer says (Record, p. 53): "that said Express Com-" pany was, during all the time mentioned in the said " bill and supplemental bill, and now is, and always " has been, a partnership." It is further admitted (Record, pp. 53, 54), that the partners are widely scattered and live in fifteen or more states of the United States and that some of them are beyond seas.

The suit is in equity, brought by the plaintiff on behalf of himself, as a shareholder, and on behalf of each and all of the other members of the company (Record, p. 2).

That is, it is a representative suit, brought by one of many persons similarly situated, upon a question of common interest to all, and for a relief which is common to all, and the case is one in which to require all to be made parties, would amount, for obvious reasons, to a denial of justice.

In such a case one may sue for all, and the only question that the Court will consider, is, whether the situation of the controversy is such as to justify the belief that he will fairly represent the rights of all.

In such a case, too, the citizenship of the *parties to the record* will alone be considered. In many instances the very circumstance that a joinder with the plaintiff of others having a common citizenship with the defendant would defeat the Federal jurisdiction, has been a ground of the denial of an application that such persons should be made parties. These principles are established by a long line of authorities:

Stewart vs. Dunham, 115 U. S., 61: A creditor's bill, where, after removal from the State Court, citizens of the same State as the defendant were brought in by an amendment of the bill. The Court said:

> "This, of course, could have furnished no objection to the removal of the cause from the State Court, because at the time these parties had not been admitted to the cause; and their introduction afterwards as co-complainants did not oust the jurisdiction of the Court, already lawfully acquired, as between the original parties."

Hotel Co. vs. Wade, 97 U. S., 13. A bondholders' suit to foreclose a mortgage. A similar objection to that interposed in the present case being made, the Supreme Court said:

> "Holders of such securities * * * are not compelled to join as respondents other holders of similar securities, if resident in other States, even if they refuse to unite as complainants, as the effect would be to oust the jurisdiction of the court."

Payne vs. Hook, 7 Wall., 425. A bill in equity by one distributee of an intestate's estate. The Court said:

> "If the Court is able to proceed to a decree, and do justice to the parties before it, without in-

jury to absent persons, equally interested in the litigation, but who cannot conveniently be made parties to the suit, it will do so.

"The necessity for the relaxation of the rule is more especially apparent in the courts of the United States, where, oftentimes, the enforcement of the rule would oust them of their jurisdiction. * * *

"The present case affords an ample illustration of this necessity. The complainant sues as one of the next of kin, and names other distributees, who have the same common interest, without stating of what particular State they are citizens. It is fair to presume, in the absence of any averments to the contrary, that they are citizens of Missouri. If so, they could not be joined as plaintiffs, for that would take away the jurisdiction of the court; and why make them defendants, when the controversy is not with them, but with the administrator and his sureties?"

The same principle has been applied in *Society of Shakers vs. Watson* 68 Fed. Rep., 736; *Smith vs. Swormstedt*, 16 How., 302; *President & Trustees of Bowdoin College vs. Merritt*, 54 Fed. Rep., 62.

2. But diversity of citizenship is not the only ground of jurisdiction. Federal questions are involved, and the complainant had a right to resort to the Federal Courts upon that ground alone.

3. It is next objected that there is no jurisdiction in equity; that a bill will not lie to restrain the certification by the State Auditor of an assessment to the County Auditor, but will lie only against an officer whose duty it is to collect the tax, and that in that respect the bill is prematurely filed.

(*a*) It is well settled that whatever remedies are accorded to resident litigants in the Courts of a State, may be availed of by citizens of other States in the Federal Courts within the jurisdiction of such State.

It has been settled by the decision of the highest Court of Indiana that a bill will lie to restrain the certification by the State Auditor to the County Auditor of an assessment for taxation. This was the very form of the remedy in the case above cited of *Hart vs. Smith*, 159 Ind., 182, in which the assessment was held to be invalid, and the decree of the Court below, enjoining the certification of the assessment by the State Auditor to the County Auditor, was affirmed. We are informed that the portion of the brief of the learned Attorney-General, submitted upon this point to the Court below in the present suit, consisted of printed pages taken from the brief used for the State before the Supreme Court of Indiana in Hart vs. Smith.

4. Moreover, the bill in this suit is framed upon that which was filed in *Adams Express Company vs. Ohio*, 165 U. S., in which the former adjudications of this Court were made concerning taxation of express companies. The same objection to the jurisdiction was raised in that case and elaborately argued in the brief of Mr. McDougall, but this Court nevertheless sustained the jurisdiction and decided the cause upon the merits.

5. Irrespective of the law of Indiana upon this subject, it would seem to be too plain for argument that where the taxing authorities of a State set in motion the machinery of the State for the taxing of property without due process of law, their action, prohibited as it is by the Federal Constitution, may be arrested at any stage in the process by the mandate of the Federal Court.

6. In addition, in the present suit the jurisdiction is based upon the prevention of multiplicity of suits, and the removal of a cloud upon the title to the company's real estate in Indiana, through the lien of the illegal tax.

Ninth Point.

It has often been made a ground of objection in suits to restrain the certification or collection of a tax, that the plaintiff is bound to tender whatever amount may be confessedly due. He may not, of course, enjoin *in toto*, the collection of a tax of which he admittedly owes a portion, for he cannot go into equity without doing equity, and equity requires, as a condition of litigating that which is in dispute, that he should first pay that which is admittedly due.

We do not know whether this objection will be raised in the present suit, but it is evident that it would be totally out of place. The invalidity of the assessment in the present case was total. The assessment was an entire assessment of the company's property in the State of Indiana, at the rate of $450 per mile, and there was no method by which the company, in any year, could ascertain and determine any exact amount due to the State.

The Board disclosed no figures—probably because they were wholly unable to disclose any figures—by which such a result was arrived at.

In certain of the years under consideration there was plainly nothing due, if, as we claim, the intangible property alone was subject to this taxation. As to other years, in which a certain amount of intangible property is shown by the return to have existed, the assessment itself was still entire. The basis of it was

undisclosed by the Board, and there was no method in which any amount due could be definitely or exactly ascertained.

The Company duly paid all taxes assessed upon its tangible property for the years in question (Record, p. 306).

As to the years in which there was no intangible value, nothing was admitted to be due, and therefore no tender could be made. As to the years in which some intangible value was shown, the principles of Santa Clara County vs. Southern Pacific Railway Co., 118 U. S., 394, are applicable. In that case the Court said :

> " If the presumption is that the State Board included in its valuation only such property as it had jurisdiction under the State constitution to assess, namely, such as could be rightfully classified under the heads of franchise, roadway, roadbed, rails or rolling stock, that presumption was overthrown by proof that it did, in fact, include, under some one or more of those heads, the fences in question. It was then incumbent upon the plaintiff, by satisfactory evidence, to separate that which was illegal from that which was legal—assuming for the purposes of this case only, that the assessment was, in all other respects, legal—and thus impose upon the defendant the duty of tendering, or enabling the court to render judgment for such amount, if any, as was justly due."

And the Court held that the whole assessment was invalid, as it could not be determined what amount was valid.

So, under the law of Indiana, the law governing this particular assessment in controversy in this case, it was held, in Hart vs. Smith (*supra*)—in which the Court decided that the valuation had included property not subject to taxation—that the action of the board in making the estimate was void as an entirety, and that the whole assessment made by the board should be set aside.

Lastly.

The decree of the Court below dismissing the complainant's bill and supplemental bills, should be reversed, and a decree entered directing the Court below to enter a decree adjudging the assessments made by the State Board of Tax Commissioners of the State of Indiana, against the property of the American Express Company, for the years 1898, 1899, 1900 and 1901, to be wholly void and invalid, and enjoining the defendant, as Auditor of State of said State, as prayed in the bill and supplemental bills.

LEWIS CASS LEDYARD,
Of Counsel for Appellant.

Supreme Court of the United States.

No. 154.—October Term, 1903.

James C. Fargo, as President of the American Express Company, Appellant, vs. William H. Hart, Auditor of State of the State of Indiana. | Appeal from the Circuit Court of the United States for the District of Indiana.

[March 21, 1904.]

Mr. Justice Holmes delivered the opinion of the Court.

This is an appeal from a decree of the United States District Court dismissing the plaintiff's bill and supplemental bills. The bill was brought by the president of the American Express Company, a joint stock company of New York, on behalf of himself and the other members of the company, to enjoin the auditor of the State of Indiana from certifying an assessment for 1898 to the auditor of the several counties of the State. Supplemental bills sought the like remedy in respect of the assessments for the following years through 1901. The ground of relief is that the assessments will result in unconstitutional interferences with commerce among the States and also are contrary to the fourteenth amendment. The plaintiff's case may be stated in a few words. The American Express Company is engaged in commerce among the States, including Indiana. It has real estate of a market value of nearly two million dollars, which is outside of Indiana and which it says is not used in its business, and fifteen million and a half dollars' worth of personal property in New York as to which it says the same; over three million dollars' worth of real estate used in connection with the business and about a million and a half dollars' worth of personal property used in the business, of which there was less than eight thousand dollars' worth in Indiana. It has paid the local taxes on this last. The total value of the property for 1898 was $22,059,055.35. The market value of what for brevity we may call its stock was $21,600,000. The State board of tax commissioners has undertaken to tax the property of the company under the law which was upheld in *American Express Co.* v. *Indiana*, 165 U. S. 469; *Adams Express Company* v. *Ohio State Auditor*, 165 U. S. 194, 166 U. S. 185; *Adams Express Company* v. *Kentucky*, 166 U. S. 171, by treating the whole business as a unit and assessing the company on a proportion of the total value of its property determined by the ratio of the mileage in Indiana to the total mileage of the company,

excluding its ocean mileage for foreign express business, which the company says should have been included. The company relies on the fact that it made a return to the board setting forth in detail what its property was, where it was situated and how used, and that the value and nature of the property was not disputed; and it contends that when these facts appeared the board was not at liberty to spread the whole value over the whole line equally and tax by mileage. The auditor in his answer sets up that the said sum of fifteen and a half million dollars in securities is used by the company as a part of the necessary capital of its business and denies that the board assesses personal property not used in connection with its business. Thus he admits by implication that the above sum did enter into the assessment made, and this would be obvious unless we should assume the intended tax to be wholly arbitrary, as the assessment was at the rate of four hundred and fifty dollars a mile for seventeen hundred and ninety-eight and a fraction miles, amounting to $809,253, as against less than eight thousand dollars' worth of tangible property in the State. There are some differences of detail between the State and the company as to the precise value of the stock, &c. But the foregoing facts present the general question.

The contention of the company in its extreme form is that the State had no right to tax it anything for the years when its stock was of less market value than its property, because that ratio showed that the whole value of the company was in its tangible assets, and that the intangible property spoken of in the Adams Express Company case was nothing. It says that in any year that property was so small as to warrant only a nominal tax. We lay this contention on one side. It was admitted at the hearing before the board of tax commissioners that an appreciable sum properly might be assessed on the mileage basis, and therefore the board was warranted in assuming the fact. It was admitted at the argument before this Court that the low market value of the stock was due in part to the ignorance of the public as to the assets of the company. On this concession the market value of the stock was not a test of the value of the business. The statement is confirmed by the continued rise in the stock since, up to $225 in April, 1902. And apart from these admissions the board well might have hesitated to believe that the company was carrying on a business, which it gave no signs of intending to stop, at a loss, and was paying its regular dividends out of investments alone. We lay on one side also the question of ocean mileage. Without dwelling on the sudden change in the returns which added nearly one hundred and thirty thousand miles in 1898, with comparatively slight explanation, or the admitted differences between the ocean and land carriage, we cannot say that the tribunal having the duty and sole jurisdiction to find the facts exceeded its powers in not allowing the item.

We come, then, to the real question of the case: whether, the tax provided for by the statute being a tax on property, it sufficiently appears that the board took into account property which it had no right to take into account in fixing the assessment at the large sum which we have mentioned. We already have stated reasons for assuming that the personal property in New York did enter into the valuation. We may add that it appears by a stipulation as to facts, that "the minutes of said State board of tax commissioners" are in evidence. This means the complete minutes. It must be assumed that the minutes show all that took place in the proceedings, and therefore that we have before us all the evidence that was put in as well as a report of what was said. There was no indication of dispute concerning the amount, value and place of the company's personal property. The protests of the company alleged that there was no dispute as to the facts. If the company had been mistaken common fairness required that it should be informed and allowed to give further evidence of the undoubted truth. The ground taken before the board, and insisted on in argument before us, was that the property ought to enter into the valuation, because wherever situated it was used in the business; if not otherwise, at least as giving the credit necessary for carrying the business on. We shall assume that the question before us is narrowed to whether that ground can be maintained. The pleadings and proceedings leave no alternative open, and no other could be pressed consistently with the candor to be expected from the officers of a State, in face of a constitutional question and dealing with great affairs. For present purposes it does not matter whether the sum taken for division on a mileage proportion was reached by taking the value of the stock or the value of the tangible assets of the company. For if the former was the starting point it appears from what we have said that the tangible assets gave the stock its value. The use of the value either of total stock or total assets is only as a means of getting at the true cash value of property within the State. *Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1, 26, 27; *Pullman's Car Co.* v. *Pennsylvania*, 141 U. S. 18, 25.

The general principles to be applied are settled. A State cannot tax the privilege of carrying on commerce among the States. Neither can it tax property outside of its jurisdiction belonging to persons domiciled elsewhere. On the other hand, it can tax property permanently within its jurisdiction although belonging to persons domiciled elsewhere and used in commerce among the States. And when that property is part of a system and has its actual uses only in connection with other parts of the system, that fact may be considered by the State in taxing, even though the other parts of the system are outside of the State. The sleepers and rails of a railroad, or the posts and wires of a telegraph company, are worth more than the prepared wood and the bars of steel or coils of wire,

from their organic connection with other rails or wires and the rest of the apparatus of a working whole. This being clear, it is held reasonable and constitutional to get at the worth of such a line in the absence of anything more special, by a mileage proportion. The tax is a tax on property, not on the privilege of doing the business, but it is intended to reach the intangible value due to what we have called the organic relation of the property in the State to the whole system. *Western Union Telegraph Company* v. *Taggart*, 163 U. S. 1, 21, 22. And this principle, established by many cases, has been extended by the cases first cited above to the lines of express companies, although those lines are not material lines upon the face of the earth. There is the same organic connection as in the other cases.

It is obvious however that this notion of organic unity may be made a means of unlawfully taxing the privilege, or property outside the State, under the name of enhanced value or good will, if it is not closely confined to its true meaning. So long as it fairly may be assumed that the different parts of a line are about equal in value a division by mileage is justifiable. But it is recognized in the cases that if for instance a railroad company had terminals in one State equal in value to all the rest of the line through another, the latter State could not make use of the unity of the road to equalize the value of every mile. That would be taxing property outside of the State under a pretense. *Pittsburg, Cincinnati, Chicago & St. Louis Ry.* v. *Backus*, 154 U. S. 421, 431; *Western Union Telegraph Co.* v. *Taggart*, 163 U. S. 1, 23. The same principle applies to personal property which the State would not have the right to tax directly. *Adams Express Co.* v. *Ohio State Auditor*, 165 U. S. 194, 227, 166 U. S. 185, 222, 223. In *Pittsburg, Cincinnati, Chicago & St. Louis Ry.* v. *Backus* there was reason to suspect an infraction of constitutional rights, but the Secretary of State testified that there was no assessment of property outside the State, 154 U. S. 434, and therefore the Court could not say that there was more than a possible overvaluation by the board. Of course if the board did not go beyond its jurisdiction its decision was final. But the Court recognized that if the facts charged had appeared the case would have been different. In the Express Companies' cases previously decided, it was pointed out that there was nothing to show that the lien might not fairly be assumed to be of substantially the same value throughout. But it was intimated on the pages just cited that if the companies should prove the fact to be otherwise a different rule would apply, and the statutes were construed not to prevent such a difference from being taken into account.

We come back to the question whether the taking of personal property outside the State into the assessment can be justified on the ground that it gives credit necessary for the business in the State. The testimony was that the property was not necessary for that purpose, and in fact was not

used. We may assume that the board was of a different opinion, so far as that was concerned, and still we may hold its action unjustified. It will be seen that we are dealing with much more attenuated relations than when there is a physical line of rails or wires to be valued, every mile of which is a necessary condition of the use of the rest of the lines beyond, and therefore a reflex condition of the value of the line behind it. The case is stronger even than one of terminals having a large value as real estate independent of their use to the road. The express business added nothing to the value of the bonds in New York. Conversely, the utmost extent to which those bonds entered into the value of property in Indiana was in so far as they helped to make the public believe that the express company could be trusted and therefore increased its good will. That they made a part of the public more willing to buy interests in the company because they were an assurance against personal liability was no concern of Indiana. But it is obvious that merely from the point of view that the express company could be trusted by the public with the carriage of goods or money the good will could not be measured by the assets. In the first place the public knew nothing of the amount. This appears as to even the more instructed portion of the public which bought interests in the concern, and *a fortiori* as to the general run of shippers. For if even the buyers of the stock of the company would pay only in the neighborhood of the value of the tangible assets it is apparent either that they did not know what the assets were, as was stated by the appellant's counsel, or else that the good will taxed was worth nothing, and either view is equally fatal to the grounds for the tax.

But again, suppose that the state of the assets of the company had been published in every newspaper in Indiana, can it be imagined that it would have had an appreciable effect upon the company's business? Certainly it is absurd to say that the business of such companies will bear an exact or any proportion to the stocks and bonds which they may own. Unless we are much mistaken, most people who want to send things by express employ a company simply because it is there, and they see its sign is out. The only effect that knowledge of the capital of the company could have would be to produce the conviction that the company was safe to employ. Assume that something is to be added to the good will of a company because it is safe, and that the good will, or a part of it, of the express business in Indiana may be considered in assessing its property there, this is very different from measuring the good will by the capital, when the facts appear as they do in this case. The difference is not a mere difference in valuation, it is a difference in principle, and in our opinion the principle adopted by the board was wrong. It involved an attempt to tax property beyond the jurisdiction of the State, and to throw an unconstitutional burden on commerce among the States. The result has been that, taking the value of the stock as stated

by the defendant to have been 125 for 1898, the State of Indiana assessed the company for nearly twice the total good will of its business, measuring that good will by the difference between the tangible assets and the total value of the stock. The injustice grew less flagrant as the stock rose, but in the year 1901 the assessment still was nearly double what the State had a right to assess, assuming that, without transcending its constitutional power, it had a right to assess its proportion by mileage of the total good will.

We have explained why in our opinion this cannot fairly be treated as a mere case of overvaluation, but is an assessment made upon unconstitutional principles. Under such circumstances it was impossible for the company to tender any sum, because it was impossible for it to say what if anything it ought to pay. It denied that under the Constitution it ought to pay anything, and it is plain that for the year 1898 at least it properly could have been assessed but a comparatively trifling sum. The contention of the company was serious and plausible. It made the only offer it could, which was to give security for the payment of whatever amount should be adjudged to be due. "If there was no right to assess the particular thing at all, . . . an assessment under such circumstances would be void, and, of course, no payment or tender of any amount would be necessary before seeking an injunction." *People's National Bank* v. *Marye*, 191 U. S. 272, 281. See also *Santa Clara County* v. *Southern Pacific Railroad*, 118 U. S. 394; *California* v. *Central Pacific Railroad*, 127 U. S. 1; *Central Pacific Railroad* v. *California*, 162 U. S. 91, 112.

The assessment being bad, for the reasons which we have stated, the board of tax commissioners acted without jurisdiction, according to the decision of the Supreme Court of Indiana. *Hart* v. *Smith*, 159 Ind. 182. We do not abate at all from the strictness of the rule that in general an injunction will not be granted against the collection of taxes. *State Railroad Tax Cases*, 92 U. S. 575. But it was recognized in the passage just quoted from *The People's National Bank* v. *Marye*, that under the present circumstances a resort to equity may be proper. The course adopted is the same that was taken without criticism from the Court in *Adams Express Co.* v. *Ohio State Auditor*, 165 U. S. 194. It avoids the necessity of suits against the officers of each of the counties of the State, and we are of opinion that the bill may be maintained. *Union Pacific Ry.* v. *Cheyenne*, 113 U. S. 516; *Pittsburg, Cincinnati, Chicago & St. Louis Ry.* v. *Board of Public Works*, 172 U. S. 32.

Decree reversed.

The CHIEF JUSTICE, Mr. Justice BREWER and Mr. Justice DAY dissented.